(18,643.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 112.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM N. PEARCE AND THE MISSISSIPPI VALLEY TRUST COMPANY, EXECUTORS OF CHARLES E. PEARCE, DECEASED.

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

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1 STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered, that heretofore, to-wit: on the twenty-second day of November, A. D. eighteen hundred and ninety-nine, there was filed in the office of the clerk of the St. Louis court of appeals, within and for the State aforesaid, a certified copy of the judgment and order granting the appeal, on appeal from the circuit court of the city of St. Louis in a cause wherein Charles E. Pearce is respondent and The Wabash Railroad Company is defendant.

And afterwards, to-wit, on the sixteenth day of December, eighteen hundred and ninety-nine, appellant filed a printed abstract of the record in said cause which said certificate and printed abstract are in words and figures as follows:

STATE OF MISSOURI, } ss:
City of St. Louis, }

Be it remembered, that heretofore, to-wit: at the June term, A. D. 1899, of the circuit court, city of St. Louis, in and for the city and State aforesaid, and on the 26th day of June, 1899, it being the 19th day of the said June term, 1899, of said court, the following proceedings were had in cause, No. 166, series A, of the cause of said court, wherein Charles E. Pearce is plaintiff and The Wabash Railroad Company, is defendant, to-wit:—

MONDAY, *June 26th*, 1899.

CHARLES E. PEARCE }
vs. } 166*a*.
WABASH RAILROAD COMPANY. }

Now, at this day come said parties by their respective at-
2 torneys, and the cause coming on for hearing, and a jury being waived, is submitted to the court upon the evidence and proof adduced, and the court having duly considered the same, doth find that the plaintiff is entitled to the possession of the property described in his petition, and delivered to him by the sheriff of the city of St. Louis on June 25th, 1895, and the sum of one cent damages for the detention of the same.

It is therefore considered and adjudged by the court, that the plaintiff retain possession of the property so delivered to him by said sheriff and recover of defendant the sum of one cent damages, together with his costs and charges herein expended, and have execution therefor.

And afterwards, at the October term, 1899, of the said circuit court, the following further proceedings were had in said cause, to-wit:—

WEDNESDAY, *November 1st*, 1899.

CHARLES E. PEARCE
vs.
WABASH RAILROAD COMPANY. } 166*a*.

Now, at this day, the defendant comes by attorney and presents to the court, its bill of exceptions, which is allowed, signed and sealed by the court, filed herein and made a part in the record of this cause; thereupon defendant files its affidavit for appeal, and presents to the court its appeal bond, which is approved by the court and filed herein, and on motion of said defendant, an appeal is allowed it to the St. Louis court of appeals, from the judgment herein rendered.

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Henry Troll, clerk of the circuit court, city of St. Louis,
3 in and for the city and State aforesaid, do hereby certify, that the above and foregoing, is a true, full and complete transcript of the judgment in the above entitled cause, and showing the term, and day of the term, month and year in which the same was rendered, and also of the order granting an appeal in said cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at office in the city of St. Louis, this 10th day of November, 1899.

[SEAL.]

HENRY TROLL,
Clerk Circuit Court, City of St Louis.

In the St. Louis Court of Appeals, March Term, A. D. 1900.

CHARLES E. PEARCE, Respondent,
vs.
WABASH RAILROAD COMPANY, Appellant. } Appeal from the Circuit Court of the City of St. Louis, Missouri.

Hon. Franklin Ferris, circuit judge.

Abstract.

This is a replevin suit, instituted on the 25th day of June, 1895, to recover certain goods and chattels of the value of $1000, charged to have been unlawfully detained by the defendant, to the
4 damage of plaintiff in said sum.

Petition.

The petition was as follows:

Plaintiff states that defendant is a corporation, duly organized and authorized to do business under the laws of the State of Mis-

souri. The plaintiff above named states that on the 20th day of June, 1895, he was lawfully entitled to the possession of certain goods and chattels to the value of one thousand dollars, described as follows, to-wit: 4 wood packing boxes, bearing upon each of the same the marks and numbers, to-wit, s, and the articles contained therein, viz: 3 albums of photographs and paintings, 3 ivory statuett-s, 16 pieces of porcelain, 2 cuisine bowls, 5 pieces of bronze ware, 12 lacquer and carved stands, 21 small potteries, 1 ivory sword, 1 sandel box, 4 pieces silver ware, 4 brass jardinier-s, 15 pieces brass ware, 2 books, 4 pieces embroidery, 4 pieces wood carving, 1 piece shell, 1 lacquer box, four metal vases, and sundry other articles of porcelain and metal, and that afterwards, on the same day, defendant took said property and still unlawfully detained the same from plaintiff, to his damage in the sum of one thousand dollars.

Therefore, he prays judgment for the securing of the possession of said goods and chattels and one hundred dollars for their taking and detention; and in case delivery cannot be made, the plaintiff prays judgment for one thousand dollars, the value thereof, together with the costs of this suit.

Answer.

The answer was as follows:

Now comes the defendant in the above entitled cause by its attorneys, and by leave of court first had and obtained, for its amended answer to the petition of plaintiff in this cause filed, admits that it is a corporation duly organized and authorized to do business under the laws of the State of Missouri.

Defendant denies each and every other allegation in plaintiff's said petition therein contained and set forth.

For other and further answer to said petition of plaintiff, defendant says that in June, 1895, its line of railway connected at Given, in the State of Iowa, with the line of railway then owned and operated by the Chicago, Milwaukee and St. Paul Railway Company, whose northern terminus was then in the city of St. Paul, Minnesota.

That in said month of June, 1895, the defendant received from said Chicago, Milwaukee and St. Paul railway, at said Given, Iowa, four (4) cases of curios marked A. W. S., consigned to Wilfred Schade and Company, in the city of St. Louis, Missouri.

That the charges then due upon said shipment, as then and there represented to defendant by its connecting line, said Chicago, Milwaukee and St. Paul railway, as aforesaid, was the sum of two hundred and sixty-five dollars and fifty-five cents ($265.55), which said sum, as aforesaid, was duly paid by defendant in due time, and in the usual course of business, to said Chicago, Milwaukee and St. Paul railway.

That upon the arrival of said shipment in the city of St. Louis, Missouri, in the month of June, 1895, the plaintiff herein presented

a bill of lading for the same, duly endorsed to him, from said Wilfred Schade and Company, and demanded the possession of said goods, without the payment of said advanced charges from the defendant, which said demand was then and there refused by the defendant, whereupon the plaintiff then instituted this action, resulting in the taking away of said four (4) cases of curios from
6 the possession of defendant, and the delivery of said goods to the plaintiff, who has since said time retained them in his possession.

That after the institution of this suit, the defendant then made further inquiry into the nature and character of this shipment, and then ascertained, for the first time, that said goods were imported into the United States by plaintiff, through Wilfred Schade and Company, from a foreign country, to-wit, Japan, and that said goods had been transported by the Canadian Pacific railway from its western terminus, Vancouver, to Sault St. Marie, in bond, for St. Paul, Minnesota, and delivered at said Sault St. Marie by said Canadian Pacific railway to its connecting line there, the Minneapolis, St. Paul and Sault St. Marie railway, for transportation to said St. Paul.

That said Minneapolis, St. Paul and Saulte St. Marie railway transported said goods from Saulte St. Marie to St. Paul, Minnesota, where the custom officers of the United States then and there, under the laws of the United States then in force, took possession of said goods, examined and appraised them, as required by said laws, and then and there duly assessed and collected from said Minneapolis, St. Paul and Sault St. Marie railway, as a first lien upon said goods, under the laws of the United States then in force, the sum of two hundred and sixty-five dollars and fifty-five cents, as custom duties then and there due to the United States from the plaintiff, and a first lien, as aforesaid, upon said goods so owned by him.

That said Minneapolis, St. Paul and Sault St. Marie railway was compelled by the laws of the United States then in force to pay said duties at said St. Paul, for and in behalf of plaintiff, in order
7 to get possession of said property, so that it could be transported over its line of railway and its connecting lines to its final destination in the city of St. Louis, Missouri.

That in so paying said duties, as aforesaid, to said officers of the United States, as aforesaid, said Minneapolis, St. Paul and Sault St. Marie Railway Company became and was subrogated to all the rights of the United States therein, and was thereby entitled to a first lien on said goods under the laws of the United States, for the amount of said duties, so paid by it, as advanced charges on said property.

That said duties, so paid for and in behalf of plaintiff, as aforesaid, at St. Paul, Minnesota, as aforesaid, by said Minneapolis, St. Paul and Sault St. Marie Railway Company, as aforesaid, were, by said Minneapolis, St. Paul and Sault St. Marie railway, collected by it as advanced charges from its connecting line at St. Paul, Minnesota, to-wit: the Chicago, Milwaukee and St. Paul railway, who, in its

turn, duly transported said goods to the end of its line of railway, to-wit: to said Given, Iowa, and there delivered the same to the defendant.

That upon the delivery of said property to it as aforesaid, at Given, Iowa, by said Chicago, Milwaukee and St. Paul railway, as aforesaid, said Chicago, Milwaukee and St. Paul railway collected from the defendant in the usual course of business, as aforesaid, as advanced freight charges, the sum of two hundred and sixty-five dollars and fifty-five cents, the amount of said duties so paid by said Chicago, Milwaukee and St. Paul railway to said Minneapolis, St. Paul and Sault St. Marie railway, at St. Paul, Minnesota, as aforesaid, for and on behalf of plaintiff on said goods.

8 That said duties were so paid by defendant, at Given, Iowa, as aforesaid, to its connecting line, the Chicago, Milwaukee and St. Paul railway, as aforesaid, as advanced charges and without knowledge on the part of defendant, at the time of said payment, that said sum was other than the usual and ordinary freight or back charges for freight earned, on said goods, and thereby due to the defendant's connecting lines.

That in so paying said duties, as aforesaid, the said Chicago, Milwaukee and St. Paul railway, and this defendant, each for itself, became, and was, subrogated to all the rights of the United States therein, and was and is thereby entitled to a first lien on said goods under the laws of the United States, for the amount of said duties, so paid by them, severally, as advanced charges upon said property, for and in behalf of the plaintiff.

That said duties were paid, as aforesaid, as advanced charges upon said goods, by said Chicago, Milwaukee and St. Paul railway and by this defendant, each for itself, for and in behalf of the plaintiff herein, in order to facilitate the transportation of said goods to their destination in the city of St. Louis, Missouri, and their delivery there to the plaintiff.

That upon the arrival of said goods in the city of St. Louis, Missouri, in due time and in good order, the defendant tendered the same to the plaintiff, upon the payment of said lawful charges thereon, to-wit: the sum of two hundred and sixty-five dollars and fifty-five cents, so paid by defendant, for and on behalf of the plaintiff, to the defendant's connecting line, at Given, Iowa, as hereinabove set forth, but that plaintiff then and there refused, and still refuses, to pay said charges, or any part thereof, to this de-

9 fendant; and by virtue of this proceeding, the plaintiff has obtained, and still holds, the possession of said goods, without the payment of said charges, whereby the same will be, unless this honorable court enters the decree herein prayed for, wholly lost to this defendant.

Wherefore, defendant says that plaintiff is not entitled to have or maintain this action; and defendant further prays the court in this cause to enter a decree establishing said duties on said goods, so paid by defendant as herein set forth, for and on behalf of plaintiff, as aforesaid, as a first and paramount lien upon the property in

controversy, and requiring plaintiff herein to pay said duties in full to the defendant before obtaining, in this court, a final order for the possession of the goods herein described; requiring and directing the plaintiff also to pay to the proper officials of the court all the costs of this action, and for such other orders and decrees in the premises as unto equity and conscience may appertain, and to this honorable court shall seem proper and just.

Reply.

The reply was as follows:

Now comes the plaintiff in the above entitled cause and for replication to the allegations set up in defendant's amended answer for a defense to plaintiff's petition, denies each and every of said allegations in said amended answer contained; and for further replication plaintiff states that under the laws of the United States, the city of St. Louis, Missouri, was on the first day of January, 1894, and has since continued to be a port of entry and delivery to which
10 goods in bond, under the laws of the United States, have been since said date and are currently consigned and delivered, and at which original entries have been and are made, goods examined and appraised, and customs duties paid; and plaintiff states that on or about the 3rd day of May, 1895, at the city of Yokahama, Japan, the Canadian Pacific Railway Company, a corporation and common carrier, entered into a certain contract with one A. Weston, an agent of this plaintiff for the purposes of said contract, by which said company, for a good and valuable consideration, to-wit: the sum of $17.20 gold, received the property set forth in plaintiff's petition from said Weston in good order and condition, and did then and there undertake and agree to transport said goods in like good order and condition, via the steamer "Empress of India," and over the lines of it, said Canadian Pacific Railway Company and its connecting lines to the city of St. Louis, Missouri, and there in like good order and condition to deliver the same unto Wilfred Schade and Company, or his or their assigns, subject to such dispositions as are provided to be made by the laws of the United States for the collection of the customs duties assessable upon said goods.

And plaintiff states that said freight charge of $17.20 was by him prepaid in gold unto said Canadian Pacific Railway Company at said city of Yokahama, and that said contract of affreightment was subsequently and duly, and before the arrival of said goods at St. Louis, assigned to him, plaintiff, by Wilfred Schade and Company.

Plaintiff further states that in accordance with the provisions of said contract and the laws of the United States, the said goods and the boxes (four in number) containing the same were, as aforesaid provided, shipped at Yokahama, Japan, in bond to be trans-
11 ported in bond to St. Louis, Missouri, at which place entry of said goods was in accordance with the consular clearance of the same to be made, and the import duties assessable thereon under the laws of the United States to be paid.

And plaintiff further states that under the laws of the United States it was his, plaintiff's, right to have said boxes and the contents thereof transported from Yokahama, Japan, to the city of St. Louis, Missouri, in bond and without any interference, opening or examination of the same, and without any assessing of customs duties or payment of customs duties on said goods by any person or persons or at any point between said city of Yokahama and said city of St. Louis.

And plaintiff says that prior to the shipment in bond of said goods at Yokahama each of the boxes containing the same was plainly marked on the cover thereof and with black marking ink and in large letters and in close proximity with the consignment marking the words "In bond;" said consignment markings being as follows:

St. Louis, 4 cases.
In bond.

And plaintiff states that it was the duty of said Canadian Pacific Railway Company and its connecting lines, receiving said goods, to transport the same in their unbroken packages or boxes to the city of St. Louis, Missouri, without delivering them into the hands
12 of any person or persons except for the exclusive purpose of transportation, and at St. Louis to deliver said boxes unopened and unexamined, subject only to examination at St. Louis by the customs officers of the United States.

And plaintiff states that owning and operating said connecting lines—the said Canadian Pacific Railroad Company—the Minneapolis, St. Paul and Sault St. Marie Railway Company—the said Chicago, Milwaukee and St. Paul Railway Company and this defendant became bound and obligated on receiving said goods, respectively, to all the provisions of said contract as aforesaid, and also became bound and obligated to transport the said goods in bond, unopened, unexamined and unmolested, to the city of St. Louis aforesaid.

And plaintiff states that while the said goods were thus in the possession and custody of said Canadian Pacific Railway Company and its said connecting lines, the said boxes were at some point, to this plaintiff unknown, opened, examined, interfered with, and that while in said custody many of said goods contained in said boxes were ruined, injured, abstracted, stolen and destroyed, to the injury of plaintiff in the sum of three hundred and fifty dollars.

And plaintiff further states that on the arrival of said goods in St. Louis he tendered to defendant certain charges claimed by defendant

to be due, to-wit: the sum of one dollar and twenty-four cents; and observing that said boxes had been opened and interfered with, and being desirious of knowing whether the said goods shipped in said boxes were all present therein and uninjured, he requested of defendant the privilege of examining the said contents in the
13 presence of said defendant or of any representative it might choose to appoint, and offered to waive all technical rights in the premises and to reimburse all advancements claimed to have been made by defendant on account of said goods, whether rightfully or wrongfully made, in case the said goods were found to be intact and uninjured, which said privilege defendant denied to plaintiff, and thereupon plaintiff took possession of said goods under this writ of replevin, as was his lawful right.

And plaintiff further states that on opening said boxes the following was found to be missing, to-wit: One piece of antique embroidery of the value of 5 yen (Japanese); and the following was found by plaintiff to be greatly injured and substantially ruined, to-wit: One ivory carved statuette of the value of 150 yen; one gold la-quered vase and carved stand of the value of 200 yen; one ivory statuette of the value of 135 yen; one silver enameled bowl of the value of 125 yen; one placque of the value of 2 yen; one box figures of the value of 4 yen; two metal warming pots of the value of 10 yen, and plaintiff states that all said articles were shipped in good order and condition at said city of Yokahama.

Wherefore, plaintiff prays for judgment, together with his costs.

Trial.

The cause came on for trial in the circuit court of the city of St. Louis, Missouri, on the 22nd day of April, 1899, before Hon. Franklin Ferris, circuit judge, sitting as a jury, in division No. 6 of said court.

Plaintiff's Evidence.

14 The plaintiff offered in evidence the following stipulation:

Agreed Statement of Facts.

It is hereby agreed, by and between the parties hereto, that the above entitled cause shall be heard and determined upon the following and undisputed and admitted facts, to-wit:

1. That the plaintiff is the owner of the goods in question.
2. That said goods were shipped from Yokahama, Japan, in bond, consigned to Wilfred Schade and Company, St. Louis, Missouri.
3. That a true copy of the contract of shipment or bill of lading for said goods is hereto attached and marked Exhibit "A."
4. That said bill of lading and all interest in the goods described

therein was duly assigned by said Wilfred Schade and Company to the plaintiff herein.

5. That said goods were received by the Canadian Pacific Railway Company at Vancouver, British Columbia, as will more fully appear from true copies of the receipts of said company hereto attached and marked Exhibits "B," "C" and "D."

6. That said Canadian Pacific Railway Company, for its own convenience, without notice to defendant herein or to any of its connecting lines, and without being either required or requested by said plaintiff or said defendant, or defendant's said connecting lines, so to do, changed the bonded destination of said goods from St. Louis, Missouri, to St. Paul, Minnesota.

7. That said Canadian Pacific Railway Company transported said goods over its own and its connecting line controlled by it, to-wit: the Minneapolis, St. Paul and Sault St. Marie railway, from said Vancouver, in British Columbia, to St. Paul, Minnesota. (See Exhibit "C.")

8. That upon the arrival of said goods at St. Paul, Minnesota, the customs officers of the United States took possession of and examined said goods by opening the cases and inspecting the contents thereof, and thereafter duly assessed the duties thereon under and in due accordance with the laws of the United States then and there in force, which said duties, amounting to the sum of $264.31, were then and there paid to said customs officers in St. Paul, Minnesota, by said Minneapolis, St. Paul and Sault St. Marie railway, and said duties so paid, as aforesaid, were placed upon the way-bill or manifest of said goods by said railway as advanced charges. (See Exhibit "D.")

9. That St. Paul, Minnesota, is, and was at said time, a port of entry in the United States, and that said customs duties and charges so levied and assessed, as aforesaid, were duly levied and assessed under the laws of the United States, and that the opening and inspection of said cases by the United States customs officers at St. Paul, as aforesaid, was in strict accordance with the laws of the United States then and there in force, provided said goods had been consigned in bond to St. Paul.

10. That after said inspection, examination and assessment at said St. Paul by said customs officers of the United States, as aforesaid, said goods were repacked by said officers in said cases and then and there redelivered by said custom officers to said Minneapolis, St. Paul and Sault St. Marie railway with said customs duties amounting to said sum of $264.31, duly levied and assessed thereon by said custom officers, which said sum was duly paid, as aforesaid, to said customs officers by said railway and marked as advanced charges on the way-bill or manifest of said goods by said railway, as before stated.

That after paying said charges on said goods to the custom officers of the United States at said St. Paul, and after the redelivery of said goods to it by said officers at said time and place as hereinbefore stated, said Minneapolis, St. Paul and Sault St. Marie

railway delivered said goods at said St. Paul to the Chicago, Milwaukee and St. Paul Railway Company, and then and there collected said customs, dues and charges, amounting to said sum of $264.31, from said Chicago, Milwaukee and St. Paul Railway Company.

12. That said Chicago, Milwaukee and St. Paul railway transported said goods over its line of railway from said St. Paul, Minnesota, to Given, in the State of Iowa, and there delivered said goods to The Wabash Railroad Company, defendant herein, and said Chicago, Milwaukee and St. Paul Railway Company, on July 21, 1895, collected from said Wabash Railroad Company, defendant herein, the following sums, to-wit:

Advanced charges	$264.31
Freight charges	1.24
Total	$265.55

as will more fully appear by the way-bill or manifest of said goods, made by the Chicago, Milwaukee and St. Paul Railway Company, hereto attached, and marked Exhibits "E," "F."

13. That when said Wabash Railroad Company, defendant herein, received said goods from the Chicago, Milwaukee and St. Paul Railroad Company as hereinbefore stated, said Wabash Railroad Company, defendant herein, became responsible under its traffic arrangements for the payment of said sum of $265.55 to said Chicago, Milwaukee and St. Paul Railroad Company, and did not at that time know that said charges were other than the usual and
17 ordinary freight charges upon said goods, advanced by each carrier of the same from the point of shipment to the place of delivery.

14. That The Wabash Railroad Company, defendant herein, transported said goods in the month of June, 1895, in due time and in good order, from said Given, in the State of Iowa, over its line of railway to the city of St. Louis, Missouri, and there tendered said goods to the plaintiff upon the payment of said sum of $265.55 charges thereon as hereinbefore stated.

15. That upon the arrival of said goods at said time and place, the plaintiff herein presented said bill of lading hereinbefore set forth, duly endorsed to him from said Wilfred Schade and Company, and demanded possession of said goods from this defendant without the payment of said advanced charges, which said demand was then and there refused by said defendant, whereupon plaintiff instituted this action, resulting in the taking of said goods from the defendant and their delivery to plaintiff, who has since said time retained the same in his possession.

16. That after the institution of this suit, defendant learned for the first time that a part of the advanced charges, amounting to $265.55 as before stated, paid by it to said Chicago, Milwaukee and St. Paul railway, as aforesaid, to-wit: the sum of $264.31, was the custom charges or duties collected on said goods by the revenue or custom officers of the United States, at St. Paul, Minnesota, as hereinbefore set forth.

17. That said custom charges or duties would have been collected in the city of St. Louis, Missouri, had said goods been transported to said city in bond, instead of to St. Paul, and pending said collection, as well as during the examination and inspection of said goods by said custom officers of the United States, said officers would have retained the custody control and possession of said goods
18 until said duty or custom charges were paid.

18. This agreement shall constitute a part of the record in said cause.

CHARLES E. PEARCE,
Attorney for Plaintiff.
GEORGE S. GROVER,
Attorney for Defendant.

EXHIBIT "A."

Canadian Pacific Railway Company's Royal Mail Steamship Line.

No. 27.

Shipped in apparent good order and condition, by A. Weston, on board of the Canadian Pacific Railway Company's steamer "Empress of India," whereof —— —— is commander, now lying in the port of Yokahama, and bound for Vancouver, B. C., four cases curios (weight and contents unknown), and being marked as per margin, to be carried upon said steamer (with leave to tow and assist vessels in distress; to sail with or without pilots; to tranship to any other steamers; to warehouse or lighter from steamer to steamer, and from steamer to shore, and with liberty to call at any port or ports in or out of the customary route in any order) unto the port of Vancouver, B. C. (acts of God, the restraints of government, the Queen's enemies, privateers, letters of marque or reprisal, rising of passengers, pirates, robbers, thieves, vermin, barratry, misfeasances, error in judgment, any act, neglect or default whatsoever of pilots, master or crew in the management of
19 navigation of the ship, collisions or fire at sea or in port, fire on wharf, in warehouse or lighter, accidents to or from machinery, boilers or steam, or any other accidents, lighterage, disasters, or dangers of the sea, or of sail or steam navigation, of whatever nature or kind, or from circumstances arising out of or connected with the employment of the company's vessels in the service of Her Majesty or of the government of any colony or of any foreign power or from any other cause of whatsoever nature, are expected): there in like apparent good order and condition to be delivered unto the company's agent, and thence with like privileges and exceptions to be transported over the railway of the said Canadian Pacific and connecting railway companies, to St. Louis, Missouri, and there, in like apparent good order and condition to be delivered unto Messrs. Wilfred Schade and Company, or his or their assigns, on payment of freight thereon in American gold coin, or its equivalent at rates as per margin.

The above goods or merchandise shall be received by the consignee and removed from the station during business hours, on the day of their arrival at the place of destination herein named, or the same will be stored at the expense and risk of the owner, shipper, or consignee; and in the event of their destruction or damage, from any cause, while in the depot, it is agreed that neither of said companies shall be liable to pay any damages therefor.

The companies reserve the right of forwarding the goods or merchandise to their destination by any other steamer or steamers belonging to either of them or to any other company or person, all risk of transhipment, landing, storing, and reshipment, to be borne by shipper or owner of the goods or merchandise, but the
20 expense to be defrayed by the companies.

It is agreed that in case the vessels of the Canadian Pacific Railway Company shall be prevented, restrained, delayed in any way by quarantine regulations from delivering their cargoes at port of destination, all charges for storage, cooperage, drayage, insurance, labor, and extra compensation for freight, in consequence thereof, shall be at the expense and risk of the owner or owners of the goods; or should the steamship be prevented from landing the goods, then she shall have liberty to land same at the nearest available port, the agent communicating as soon as practicable with shippers or consignees.

And it is expressly stipulated and agreed that in case any claims shall arise against either of said companies for any loss or damage accruing while such goods or merchandise are on the voyage from port of shipment to destination, such claims shall be preferred at the office of a delivering company in writing at the place of destination before delivery thereof at said place of destination. And in case such claim, whatever it may be, shall not be preferred within the time and at the place hereinbefore designated, such loss or damage shall be deemed to be waived, and the said companies, and each of them, shall be discharged therefrom.

And it is further stipulated and agreed, that in all cases of loss of any portion or the whole of said goods or merchandise, the amount of claim shall be restricted to the cash value of such goods or merchandise at the original port of shipment, at the time of shipment, and that all claims for either partial or total loss or damage shall be ascertained and adjusted upon the same basis of value.

21 It is expressly understood, that neither the Canadian Pacific Railway Company nor either or any of said connecting railway companies, will be accountable for weight, leakage, breakage, insecure packages, or for loss or damage from effects of climate or decay, or from obliteration of marks or numbers, or insufficiency of address, or caused by other cargo in contact, or otherwise, when properly stowed, or from unavoidable accidents, detention or delay, and that said companies will not become liable for any value exceeding one hundred dollars ($100.00) upon each of the above named packages unless other valuation is declared and so expressed in this bill of lading, and they are not to be responsible for gold, silver,

precious stones or metals, jewelry, nor treasure of any kind unless bills of lading, in which the value is stated, are signed therefor.

It is further agreed that neither the Canadian Pacific railway nor either of said connecting railway companies, will be responsible for damages arising from the effects of heat or cold, or for loss or damage to goods or merchandise, occasioned by providential causes, or for ordinary wear and tear of packages not the result of accident or gross carelessness by fire from any cause whatever, while in transit or at stations, or for loss of any property caused by bad or insufficient cooperage unless it is proved to have occurred during the time of its transit over the line, and of this, notice must be given within thirty-six hours after the arrival of the same.

And it is further stipulated and agreed, that a delivery at the port of Vancouver of the goods and merchandise mentioned in this bill of lading according to the terms thereof to the company's agent shall absolve the within mentioned steamship from all claim or
22 liability of every description, and in like manner that a delivery of the said goods or merchandise by the Canadian Pacific Railway Company to any of the connecting railway companies embraced in the route shall absolve the said Canadian Pacific Railway Company from all claim or liability of every description.

And it is further stipulated and agreed, that each of the parties hereinbefore named, shall be liable only for loss or damage accruing upon its own route; that said parties shall not be jointly liable, for any loss or damage to such goods or merchandise, and that neither of said parties shall be liable, in any event, for any loss or damage accruing upon the route of the other.

Any claim against the Canadian Pacific Railway Company under the contract of affreightment, shall be construed according to British law, and all claims of the nature of general average shall be adjusted and settled in conformity with York Antwerp rules 1890; the ship reserving the right of lien on cargo for contribution.

Fish, fruit, vegetables and other perishable goods, glass, crockery, or articles contained in glass or crockery, or castings, or any articles of a fragile nature taken only at the risk of the shipper, owner or consignee.

Any goods or merchandise taken on deck to be at the risk of the shipper, owner or consignee.

Varnish, turpentine, camphene, burning fluids, acids, inflammable goods or other dangerous articles shall be distinctly so marked as to indicate their character before shipment, and be transported if the carrier chooses on deck or elsewhere, and they shall in all cases be at the shipper's or owner's risk. If any such articles shall be secretly delivered to the carrier without stating the character thereof and having the same distinctly marked upon the package or case containing the same, the shipper shall be responsible for any
23 damages resulting therefrom, and such articles may be destroyed by the carrier, if deemed necessary, without incurring any liability therefor.

The said goods or merchandise are shipped and received upon

the condition of the stipulations and provisions hereinbefore expressed, the undersigned undertaking, on behalf of the several parties hereto to the extent only of the liabilities herein stated to be assumed by each of them respectively.

In witness whereof, the agents have signed — bills of lading excluding captain's copy, all of this tenor and date, one whereof being accomplished, the others are to stand void.

Dated at Yoko., this 3rd day of May, 1895.

For THE CANADIAN PACIFIC RAILWAY CO.,
—— ——, *Agents.*

The margin of said bill of lading is as follows:

Form C. 30. For overland U. S. A. points. Yokohama to St. Louis, Mo.

St. Louis, 4 cases.

Total value of shipment $8.00
" gross weight of shipment, lbs. 622
" measurement of shipment, ton — feet —

Freight on:—

Tons 1 feet, 3, at $16.00 per ton		$17.20
Lbs., gross — at — per lb		
	Packages — at — per pkg	
24	Value $— at — per cent	
Freight payable on delivery, gold		$17.20

Freight paid Yokohama.

Important Notice.—Shippers consigning goods or merchandise "to order," must, in order to avoid delay and expense at destination, indicate on the captain's copy of this bill of lading (or by sealed cover addressed to the company's agent at Vancouver, B. C., attached to the captain's copy of this bill of lading) the person or firm to be notified on arrival of the goods at destination.

"Two copies of this bill of lading, duly endorsed, must be sent to consignee, to effect custom house entry and delivery of goods." Measurement and weight subject to correction.

On back of invoice: "Deliver to Chas. E. Pearce or order."

WILFRED SCHADE & CO.

Charges to be paid by C. E. Pearce.

W. S. & CO.

EXHIBIT "D."

STATE OF MINNESOTA,
County of Ramsey, City and Port of St. Paul, } ss:
Office of the Collector of Customs,

I, Arthur W. Lyman, special deputy collector of customs of the United States at the port of St. Paul, hereby certify that the foregoing written paper has been by me carefully compared with a certain original inward foreign manifest on file in the office of the
25 collector of customs at St. Paul, aforesaid, with the several endorsements upon said original, and that I find the said foregoing paper to be a true and correct copy and transcript of and from said original and of and from all endorsements thereon and of the whole of each of them.

In testimony whereof, I have hereunto set my hand and affixed the seal of my said office at St. Paul, Minnesota, on the 13th day of December, 1898.

ARTHUR W. LYMAN,
[SEAL.] *Special Deputy Collector.*

Oral Testimony.

CHARLES E. PEARCE, plaintiff, testified in his own behalf as follows:

I am the plaintiff in this suit; I became the owner of the goods in suit prior to their shipment at Yokohama; they were purchased in different parts of Japan, China, and East India; they were art works for the most part, ivory carvings, silver, enamel and metal works, cloisonne ware; the goods were very delicate and had to be packed very carefully; I adopted a well-known custom of employing a professional packer, Mr. Weston, to whom people traveling are accustomed to send their articles until they get ready to come home; he takes care of them and packs them and attends to the details of shipment and earns certain fees that are paid him; that I did; I employed Mr. Weston for that purpose; I saw them packed; they were packed with great care, and at the special request that they should be so packed, as I knew they had to be handled on railroads in this country; in the first place there has to be customs
26 clearance under the law, which is made in quadruplicate; one of these is retained in the office of the counsel at the point of shipment; the other one accompanies the goods from the point of consignment to the point of destination; the third one goes to the customs office at the point of destination, which in this case was St. Louis, and the fourth one is delivered to the shipper for his own information and use.

Witness here stated that he had a duplicate invoice, and produced it. (See Exhibit "A," attached to agreed statement of facts.)

Referring to the paper, witness continued:

In the first place there is the affidavit of Mr. Weston; that is his signature; that affidavit he makes; he takes it over to the office of the consul and makes it; I saw him make it; the man who did the packing made that affidavit in my presence; then he has to take this paper to the United States consul's office, and there he declares

the clearance; I find the signature of John McLean, consul-general, Kanagawa, which is Yokohama; the official name is Kanagawa; after that affidavit — made, and the signature of the consul procured, the paper was given to me as the owner of the goods; this clearance and the mark is on the goods; I do not find the words "in bond" on that clearance; it has been declared in my presence that entry was to be made at the port of St. Louis in the United States of America, and then the goods were marked "in bond" in accordance; the packages were marked with a diamond out-line, with the long points up, in which are the letters "A. W. S.," and on the outside is "1–4," which means four boxes and that is one of the four; under that "St. Louis;" underneath St. Louis, "in bond." That
27 is the way they are always marked; these inscriptions were large letters; I should say the "in bond" was about half an inch high, in black ink; the others were substantially the same size; when I last saw these goods at Yokohama, they were packed and marked ready to be carried to the ship at the wharf.

The witness here identifies a paper called the manifest, and states that he finds the four boxes of curios marked on the manifest: Wilfred Schade and Company, four cases curios marked "A. W. S., 1-4, A. Weston, consignor, Wilfred Schade and Company, St. Louis, consignees, dutiable value." On the back is the clearance, or rather the certificate of the United States officers at Vancouver and Portal, which is where the Soo line crosses from Canada to the United States, to the effect that these goods were contained in car No. 22978, sealed with the seal of the United States, and that they crossed the line at Portal in that condition. In other words, it was a bonded car, and these officers have to certify as it goes across the border, that car is in an undisturbed condition.

By the COURT:

Q. Where is Portal?

A. It is on the border, on what is known as the Soo line—between Sault St. Marie and St. Paul.

By Mr. KEHR:

Q. Where did you next see these goods after their shipment from Yokohama?

A. I next saw the goods in my house. I saw the boxes in the freight depot of the Wabash railroad.

Q. Now, please state the appearance of the boxes when you saw them at the freight warehouse of the defendant.

A. The strips around the boxes had been cut. The edge of the boards or cover showed that they had been pried, split off, in
28 other words, and a strip of fibrous packing was sticking out on the outside of the boxes, showing that they had been opened. I went into the office of the freight agent and said that these boxes had evidently been opened somewhere by somebody; that I did not know whether these boxes contained bricks or sawdust, and that I did not propose to pay any charges or anything on those goods until I knew that the articles shipped were contained in

them, and that they were in an unbroken condition. I said to him that no matter what the charges were, if the goods were found to be right I was perfectly willing to waive any technical rights I had and pay whatever it was. He refused to allow me to inspect the goods there or anywhere else until I had paid the full bill which they claimed to be due. I then went to the general freight agent or superintendent. His name is Becker. He was in the Century building at that time, if I remember right, and I told him the same thing, and he refused to allow the goods to be inspected at all until the charges had been paid. I then replevined the goods. Then a day or two after that I had a conversation with Mr. Blodgett, the general attorney of the Wabash, and laid the whole matter before him, and then I ascertained that the Wabash Railroad Company had not paid these moneys at all at that time, and did not pay them until the succeeding July. This conversation was just after the suit was filed. The suit was brought June 25, 1895. It was within two or three days.

The COURT: Do you concede that you learned it before the 25th of June?

Mr. GROVER: No; we don't know when we learned it.

The COURT: If it is admitted that the road became liable before the suit was instituted, that would cover it.

29 WITNESS: I wish to state that your present construction of that is totally different from your understanding at the time the thing occurred, because it was discussed and talked over to a considerable extent; your claim was that you had certain traffic arrangements.

The COURT: I don't think it is competent to go back to the original conversation before the suit was brought to show that the road at that time knew that the charges consisted of custom duties. It is stated in that stipulation that they did not know.

By Mr. KEHR:

Q. Now, Major, you stated that you had a conversation a day or two after the suit was brought, with Col. Blodgett, the general solicitor of the defendant; what was said between him and yourself in that conversation in regard to the item of $264.31?

Mr. GROVER: We object for the same reason. Any statement Mr. Blodgett made at that time is no part of the *res gestæ*, and is absolutely incompetent and immaterial under the stipulation. It is incompetent for the reason that no matter what it was, you ought not to admit testimony as to these conversations in the absence of any showing here, and there is none, that we ever undertook to transport these goods from our connecting line to any point without having them opened by any officer of the United States and the assessment of duties.

The COURT: I overrule the objection. The agreed statement mentions the fact that the knowledge came some time after the suit.

Counsel for defendant then and there duly excepted to the ruling of the court.

30 A. I explained to Col. Blodgett what had been done, and the reasons for it; and Col. Blodgett agreed with me that it should be considered that a regular legal tender of the freight charges had been made, and subsequently Mr. Grover himself made the same agreement with me. On the 19th of July I received this letter from Col. Blodgett (exhibiting letter) and on June 3, 1896, I received a letter from Mr. Grover. The whole subject was talked over between Col. Blodgett and myself in his office.

Witness resumed: This was a very short time, two or three days after the institution of the suit, and long prior to the 25th of July. He told me that he had investigated the matter with their correspondents, and here is some of th orrespondence, with the upper lines and that these were customs duties which had been paid by these connecting lines north and charged over unto them.

Mr. KEHR: I offer these only (referring to some letters) to fix the time at which notice of the character of the item come to the company.

WITNESS: After I came into possession of the goods I examined them; I found that a piece of antique embroidery was gone; the other articles set up in your replication, there were some of them ruined as art works and others were badly damaged; the Japanese silver yen is equal to 52 cents, and the Japanese gold yen is equal to the American dollar.

Mr. GROVER: Does this yen mean silver or gold?

A. I would not like to say; the transactions at the time I was in Japan were made upon the basis of the silver yen; the Japanese at that time were on a silver basis, and the exchange value was 52 cents in American gold.

31 I have gone over the items made in my reply of goods lost or injured with the view of fixing the amount of the injury and loss; the piece of antique lace which was lost is $350.00; that was the cost of the goods; the damage to me is very much greater than that, because they were not bought to be broken; that was the cost of the goods.

Cross-examination:

I saw them packed; they were checked off by me; I am an experienced traveler.

Q. To what do you attribute this injury—to the opening at St. Paul or to the repacking?

A. I attribute it to the opening somewhere.

Q. It is admitted here that they were opened at St. Louis and repacked by the Government. In your opinion, is that the cause of the injury?

A. I don't know; they were repacked by somebody.

Q. The injury you attribute to that cause, because they were not packed as skilfully as originally at Yokohama.

A. That is simply a presumption, from the fact of the opening. I don't know whether these goods were injured in St. Paul, or whether by the Wabash.

Q. Were they repacked?
A. Yes, sir; in the boxes. All these goods were contained in the boxes with the exception of that antique embroidery.
Q. *They were not repacked, according to their condition, when you received them, in as skillful a manner as in Yokohama?*
A. Certainly not.
Q. *That is a fact?*
A. *Yes, sir.*

Counsel for plaintiff here offered in evidence the clearance,
32 already identified by the witness, and the original contract of shipment, and also a letter, signed by George S. Grover, addressed to the plaintiff, dated June 3, 1896.
Copy of said letter is hereto attached, and marked Plaintiff's Exhibit "C."
The following exhibits, as identified by the plaintiff, were offered in evidence:
(See also Exhibit "A," attached to the agreed statement of facts.)
This was all the evidence in the case.

Defendant's Instructions Refused.

Whereupon the defendant asked the court to give the following instructions:
"The court sitting as a jury declares the law to be that under the pleadings and the evidence in this case, the plaintiff is not entitled to recover.
The court sitting as a jury declares the law to be that under the pleadings and all the evidence in this case, the sum of $265.55 with six per cent. interest thereon from the date of the payment of said sum by the defendant, to-wit, in June, 1895."

Defendant's Exceptions Saved.

Which instructions and each of them, the court refused to give, to which refusal of its instructions thus prayed for, the defendant at the time then and there duly excepted, and saved its exceptions.

33 *Cause Taken under Advisement.*

The court thereupon took the cause under advisement.

Judgment.

On the 29th day of June, 1899, the court rendered a judgment for the plaintiff for possession, and for one cent damages.

Motion for New Trial.

On the 26th day of June, 1899, the defendant filed its motion for a new trial, as follows:
Now comes the defendant in the above entitled cause and moves the court here to set aside its judgment and finding herein, and to

find a judgment in favor of the defendant, for the following reasons to-wit:

First. Because said finding and judgment is against the law.

Second. Because said finding and judgment is against the evidence.

Third. Because said finding and judgment is against the law and the evidence.

Fourth. Because said finding and judgment is in favor of the wrong party, in that it should be in favor of the defendant instead of in favor of the plaintiff.

Fifth. Because the court refused proper and legal instructions asked by the defendant.

Sixth. Because upon the whole record the finding and judgment is erroneous.

34 *Seventh.* Because the court refused to find, as requested by the defendant, that upon the pleadings and the evidence the plaintiff was not entitled to recover.

Eighth. Because the court refused to find, as requested by the defendant, that upon the pleadings and all the evidence the plaintiff was not entitled to recover.

Ninth. Because the court refused to find, as requested by the defendant, that the defendant was not responsible in this case for any injury occasioned by the examination, unpacking and repacking of the contents of plaintiff's boxes, the sole injury here sued for, when, as the evidence shows, such examination, unpacking and repacking was conceded to have been done by the revenue officers of the United States at St. Paul, a port of entry in the United States, under the authority of and in due conformance to the revenue laws of the United States.

Motion Taken under Advisement.

The court thereupon took said motion under advisement.

Affidavit for Appeal.

On the first day of November, 1899, defendant presented its affidavit for appeal, and appeal was allowed by the court to the St. Louis court of appeals.

Bill of Exceptions Filed.

On the first day of November, 1899, the defendant presented to the court its bill of exceptions in said cause, and on said day
35 the same was signed, sealed and made a part of the record herein.

Appeal Bond Filed.

On the first day of November, 1899, the defendant presented to the court its appeal bond in said cause, which was thereupon approved by the court, and filed.

GEORGE S. GROVER,
Attorney for Appellant.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

EXHIBIT "C."

WILFRED SCHADE & CO.,
ST. LOUIS,
MO.

PRO. 6433.

ST. PAUL, June 5, 1895.

TO MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RY. CO., DR.

		For Transportation and Charges on	WEIGHT	RATE	FREIGHT CHARGES	ADVANCE CHARGES
Where from	Vancouver	4 Ca.	620	118½	Pd.	
Consignor		Curios	St. P.-St. L.	20	8.84	
Way-Bill No.	4157		Custom			265.55
Car No.	22978				Less prepaid	1.24
Initial	C. P.					
Date of W.-B.	5-25					

Received payment,

Total Chrgs., 264.31

F. JONES, 6-15-95, Agent.

36-1/2

EXHIBIT "D."

CANADIAN PACIFIC RAILWAY COMPANY.

INWARD FOREIGN MANIFEST.

Report and manifest of merchandise laden on board car No. 22,978 of the Canadian Pacific Railway Company, which merchandise was taken on board at Vancouver, in the British province of British Columbia, on the 23d day of May, 1895, and destined for St. Paul.

Quantity of Merchandise.	Description of Merchandise.	Marks and Numbers.	Consignor.	Consignee.	Dutiable.	Value.	Remarks.
2	C/s Cotton Goods.	A 1⅛	Kaisha.	Wm. Nsahi, Cleveland.	349	75	Yen.
25	H/c Tea.	Special Delivery 1	Many & Co.	Order.	1818	88	"
25	"	Select 1		Saginaw.			
125	"	Swing 1	"	Order Kalamazoo	3982	57	
29	Pkg.	AA ⅛	Brandenstein.	Order St. Paul.	1064	43	Value included on 1 pkg. to follow.
4	C/s Curios.	AW S ¼	Weston.	W. Schade & Co., St. Louis.	1651	87	"
4	Rolls Matting.	T D T D C	Delacamp & Co.	Brown Bros. & Co., St. Louis.	223	25	"
16	" "	T D S C R P D R C					
1	" "						
10	C/s Curios.	T 4	Kwashe.	B. Haywashi.	126	13	"
10	"	S M	Kaisha.	Minneapolis order	198	53	"
2	C/s Paper.	P/O	Wellyer & Co.	Minneapolis order Minneapolis.	220	10	"

UNITED STATES COMMERCIAL AGENCY AT VANCOUVER, B. C.

Quadruplicate Consular Manifest.

No. 423. Car No. 22978.

I, C. H. Woodward, the undersigned owner (agent or consignee) or conductor of car No. 22978, now about to depart and destined for St. Paul, do solemnly swear (or affirm) that this manifest contains, to the best of my knowledge and belief, a full and complete list and description of the contents of said car, and that the quantities and value of said contents are in this manifest faithfully and correctly stated.

C. H. WOODWARD,
Agent (or Conductor).

Subscribed and sworn to before me this 23rd day of May, 1895. And I hereby certify that this car was sealed and the manifest verified under my personal supervision.

[SEAL] F. J. SCHOFIELD,
United States Commercial Agent.

Serial No. 269.

CANADIAN PACIFIC RAILWAY CO.

Report and Manifest
OF THE
Contents of Car No. 29978.
OF THE
Canadian Pacific Railway Co.

Destined for
St. Paul.

Customs District
OF THE
United States of America.

Inspector's Certificate.

Port of Portal, N. D.,
31st day of May, 1895.

Arrived June 5, 1895.

I hereby certify that the seals on the within mentioned car were intact on arrival at this port, and that the car was in general good order.

Have further sealed said car with Customs Hooks No. 17178 and 17286, Series J 037 and J 047.

[SEAL] GEO. A. SCHOFIELD,
Inspector of U. S. Customs.

FINAL DECLARATION.

OATH OF DELIVERY OF CAR.

I, ...
hereby certify that no goods, wares or merchandise have been unladen, removed from car or placed upon or within the car described in the within manifest since it came within the bounds of the United States.

F. JONES,
(Conductor or Agent.)

Subscribed and sworn to before me this .....day
.....189....

.....
Deputy Collector.

Manifest No.....
.....Ry.
Car No.....
Date shipped.....
Date received.....

I hereby certify that the within mentioned car has this day been received at this port with seals intact and the contents found to correspond with the manifest.

Port of St. Paul.
Date, June 6, 1895.

M. J. TOBIN,
United States Inspector.

24 10675

PLAINTIFF'S EXHIBIT "A."—CONCLUDED.

Marks and Nos.	No. of Pkgs.		DESCRIPTION.	Price.	Amount.	
			Amount Brought Forward			
1 Short		2s	Paper bowl	80		
A W S	2	2s	Small brass vases	5 00		
	2	2s	Calico handkerchiefs	20		
	1	3s	Plate	2 00		
	2	2s	Wood whistles	40		
		2s	Filigree thread	40		
	2	2s	Paper toy vase	60		
	1	2s	Brass plaque	5 00		
		2s	Book Roma	2 80		
	6	2s	Child cap pattern	4 00		
	3	2s	Stopper patterns	5 00		
	2	2s	Photo album	65 00		
			Yen		1638 36	

A. WESTON, *Agent of Purchaser.*

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

41 Cover on invoice was as follows:

Invioce of —— —— shipped by —— on the —— bound for —— and consigned to —— —— for account and risk of the concerned.

Marks and Nos.	No. pkgs.	Description.	Price.	Amount.
A. W. S. 1	4 C.	Curios.	1638.36	
		Charges.		
Cost of transportation to Yokohama.....		.....		
Cost of shipment		.....	2.00	
Packing boxes etc.....		.....	3.75	
Insurance		.....	.....	
Commission		.....	.....	
Consular fee		.....	5.26	
Other costs.....		.....	2.50	
Total yen.....		.....		13.51
				1651.87

Yokohama, May 9, 1895.

A. WESTON, *Shipper,*
U. S. Consulate-General, Kanagawa, Japan.

42 (Form No. 140.)

Certificate to be Indorsed on Each of the Triplicate (or Quadruplicate) Invoices of Merchandise Actually Purchased.

I, deputy consul-general of the United States at Kanawaga, Japan, do hereby certify that at Yokohama, Japan, on this 9th day of May, A. D. 1895, the within invoice, No. —, in which are mentioned and described certain, porcelain, bronzes and sundries, amounting to the charges thereon, to the total sum of 1651.87 silver yen, was produced to me by A. Weston, in person, who thereupon declared in writing, in my presence, that the entry of said merchandise was to be made at the port of St. Louis, Missouri, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed, is the person he represents himself to be, and that the price stated in said invoice represents the actual market or wholesale price of the merchandise described in said invoice, in the principal markets of the country at the time of exportation, excepting as noted by me upon said invoice, or respecting I shall make special communication to proper authorities.

Witness my hand and seal of office at Kanagawa, Japan, the day and year aforesaid.

[SEAL.] JOHN McLEAN,
Deputy Consul-General of the United States.

(Form No. 138.)

43 *Declaration to be Indorsed on the Invoice and Signed by the Purchaser or Duly Authorized Agent of Such Purchaser, Where Merchandise Has Been Actually Purchased.*

I, A. Weston, of Yokohama, duly, solemnly and truly declare that I am the agent of purchaser of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at Yokohama, Japan, whence said merchandise is to be exported to the United States; that said invoice contains a true and full statement of the time when, the place where, and the person from whence the same was purchased, and the actual cost thereof, and all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to any one, and that the currency in which said invoice is made out is that which was actually paid for said merchandise. And I further declare that it is intended to make entry of said merchandise at the port of St. Louis, Missouri, in the United States of America.

A. WESTON.

Duplicate.

Invoice No. 1046.

KANAWAGA, JAPAN.

Date, May 9, 1895.
Goods, curios.
Value, yen, 1651.87.
Shipper: A. Weston.
44 Consignee: Wilfred Schade & Co.
Vessel: Emp. of India.
Destination: St. Louis, Mo.

Postal.

The Wabash Railroad Company, depot No. 1, Franklin Ave.

JUNE 17, 1895.

The following articles consigned to your care, from St. Paul, Vancouver, have been received this day:

W. B. D.—5. Car 1968.

Articles.	Charges.
4 cs. curios	$265.55

If not taken away and charges paid in 24 hours, the freight will be stored at your risk and expense, or demurrage charged for use of car.

No freight delivered until charges are paid.

T. W. ANDERSON, *Agent.*

Sign your name hereon when you send for freight. Please deliver this card.

(Signed) W. SCHADE & CO, *Consignee.*

Present bill lading.
Strangers especially must do so.
On payment of charges.

Above postal card addressed to Wilfred Schade and Co., 810 Olive St., city.

45 PLAINTIFF'S EXHIBIT "C."

ST. LOUIS, MO., *August* 14, 1896.

Maj. Charles E. Pearce, city.

DEAR MAJOR: Our records show that the advance charges on your four boxes of curios shipped from Japan were charged against us by the C. M. & St. P. railway immediately upon the delivery of the freight to us at Given, Iowa, in the latter part of June, 1895, and that this company paid to the C. M. & St. P. railway said charges in due course of business at the next monthly settlement of the joint account, to-wit: on the 29th day of July, 1895. You instituted suit in this case on the 25th day of June, 1895, I believe. At least that is what our copy of the petition shows. Of course under the custom then as now prevailing along connecting lines of railroad, the moment the freight was delivered to us with the advance charges on it, the connecting line became responsible therefor, and was expected to pay, and would be compelled to pay, at the next monthly settlement, such joint charges. I would like to have the benefit of that fact in the stipulation, and would be glad to have you interline it so as to show that custom as well as usual course of business.

Yours truly, GEORGE S. GROVER.

At the bottom of the foregoing order, written in lead-pencil, was the following:

The above admission of defendant's attorney shows that the Wabash Railroad Company did not pay the amount of duties until after suit in replevin had been instituted. Suit was brought June 25, 1895, and the Wabash paid the following July 29; so they had full notice.

46 And afterwards, to-wit: on the 14th day of March, 1900, the following among other proceedings were had in the said St. Louis court of appeals:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767.

Now at this day comes appellant by its attorney and after argument herein, submits this cause to the court and respondent failing to appear, though duly called, this cause is taken as submitted to the court of respondent's brief.

And afterwards, to-wit: on the 20th day of November, 1900, the following among other proceedings were had:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767. Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment ren-
47 dered herein by the said circuit court of the city of St. Louis be in all things affirmed and stand in full force and effect; and that respondent recover of said appellant his costs and charges herein expended and have execution therefor. Opinion filed; separate opinion by Judge Bland filed.

And on Tuesday, January 8th, 1901, the following among other proceedings were had:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767.

Now at this day, the court having fully considered appellant's motion for a rehearing, doth order and adjudge that said motion be sustained; and that the judgment of affirmance heretofore entered in this cause by this court, be and the same is hereby set aside and for naught held and esteemed; and that said cause be continued to the March term, 1901, of the court.

And on the 4th day of April, 1901, the following among other proceedings were had:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767.

48 Now at this day, comes appellant by his attorney, and after argument herein, submits this cause to the court. And also comes respondent and submits this cause to the court on his briefs.

And afterwards, to-wit: on Tuesday, May 7th, 1901, the said St. Louis court of appeals delivered the following written opinions:

In the St. Louis Court of Appeals, March Term, A. D. 1901.

TUESDAY, *May* 7, 1901.

CHARLES E. PEARCE, Respondent, *vs.* WABASH RAILROAD COMPANY, Appellant. } No. 7767. Appeal from Circuit Court, City of St. Louis.

Statement and Opinion of the Court.

Briefly stated the facts are, respondent shipped in bond via the Canadian Pacific Railway Company, and its connecting steamship line four boxes of curios from Yokohama, Japan, consigned to Wilfred Schade & Co., destination port of St. Louis, Missouri, and prepaid the freight charges for the entire route. From Yokohama the goods were carried by steamship to Vancouver, British Columbia, and there delivered to the Canadian Pacific Railway Co., and were by it placed in a bonded car duly sealed. For its own
49 convenience, without the knowledge or consent of the plaintiff or the consignee, the Canadian Pacific Railway Co., changed the bonded destination of the goods to the port of St. Paul, Minnesota, and it and its connecting line, the Minneapolis, St. Paul & Sault St. Marie Railway Co., carried the goods to St. Paul and delivered them to the United States custom house at that point. The United States custom officials at the port of St. Paul received the goods, opened the packages, examined them and appraised their contents and assessed the import duties and charges on the goods at $264.31. The Minneapolis, St. Paul & Sault St. Marie Railway Co. paid the customs dues so assessed, took the goods from the customs house as repacked by the customs house officials and billed them to the Chicago, Milwaukee & St. Paul Railway Co., to be by it forwarded to Given, Iowa, where the latter company connects with the appellant railway company. The $264.31 import duties were incorporated in the way-bill furnished the Chicago, Milwaukee & St. Paul Railway Co. by the Minneapolis, etc. Railway Co. The Chicago, etc., Railway Co. carried the goods to Given, Iowa, and there delivered them to the appellant railway company to be carried to their destination, St. Louis, Mo., and furnished it a way-bill showing the payment by the Chicago, etc., Railway Co. of the $264.31 as advanced charges, which the appellant agreed to pay and afterwards did pay.

The appellant carried the goods to St. Louis in the same condition they were in when it receive- them, and offered to deliver them to the respondent on the payment by him of the advanced charges of $264.31. Respondent discovered that the packages had been opened

after their shipment from Yokohama, and refused to pay the charges unless he was given opportunity to open the packages and inspect the goods to ascertain their condition. The appellant re-
50 fused to permit the inspection in advance of the payment of charges, and respondent replevined the goods and took them into his possession. On opening the packages he discovered the goods of the value of $350.00 had been abstracted and that others had been damaged. Item thirteen of the agreed statement of facts is as follows: "That when said Wabash Railway Company, defendant herein, received said goods from the Chicago, Milwaukee & St. Paul Railway Company, as hereinbefore stated, said Wabash Railroad Company, defendant herein, became responsible under its traffic arrangements for the payment of said sum of $264.31 to the Chicago, Milwaukee & St. Paul Railway Company, and did not at the time know that said charges were other than the usual and ordinary freight charges upon said goods advanced by each carrier of the same from the point of shipment to the place of delivery." And the first clause of the fourteenth item reads as follows: "That the Wabash Railway Co., defendant herein, transported said goods in the month of June, 1895, in due time and in good order, from said Given, in the State of Iowa, over its line of railway to the city of St. Louis." The evidence tends to prove that the loss of some of the goods and the damage to others were occasioned through the fault or negligence of the custom house officials at St. Paul, and there is no evidence whatever that any of such is attributable to the wrong or negligence of the appellant. On the contrary, it is admitted that the goods arrived at St. Louis in the same condition in which they were when received by the defendant at Given, Iowa. The original contract of shipment expressly provides that each carrier in the line, beginning at Vancouver and ending at St. Louis, "shall be liable only for whatever negligent act was committed by it upon its own line and no other." In this state of the case the defendant is not liable for the loss or damages to the goods (Nines *vs.* Railway
51 Co., 107 Mo. 475), and respondent cannot offset his damages against the advanced charges paid by appellant.

Respondent bases his right to the goods on the assumption that the entry of the goods at the custom house at St. Paul was not only unnecessary, but was in violation of the contract of shipment and prejudicial to him; that the payment of the customs dues at St. Paul was not necessary or incidental to their transportation. A carrier may pay to a connecting carrier charges that the latter has paid and retain possession of the goods for its reimbursement, where the advance charges were such as were incident to the transportation of the goods and were necessary to be paid in order to continue them in transit; such as freight and warehouse charges, and for the discharge of matured and valid liens on the goods, created by law or by the owner, for the non-payment of which the transit of the goods has been stopped or their possession withheld from the carrier. Steamboat Virginia *v.* Craft, 25 Mo. 76; Richardson *v.* Risk, 104 Mass. 156; Redfield on Carriers, 282; Hutchinson on Carriers,

478. But the payment of the lien in order to continue the transportation is not obligatory on the carrier and, if made without the consent of the owner, is at its risk. The United States had a specific statutory lien upon the importation for the payment of import duties and one which had to be discharged before the goods could be lawfully delivered to the respondent or to the consignee. The value of this lien could only be ascertained by inspection and appraisement by the authorized officials of some custom house at a port of entry. Section 3097, U. S. R. S. 1878, 2nd. ed., requires a carrier having imported goods in charge arriving on the north or northwestern frontier to report them to the collector in charge of
52 the port of entry in the district in which the goods shall first arrive, accompanied with manifest and entries, and it is made the duty of the collector of such ports to exercise and discharge the same duties as if the importation had been made at sea, but this section has no application to imports brought into the United States in bond. It is admitted in the agreed statement of facts and shown by the testimony that the goods were shipped in bond from Yokohama, and the evidence is that the four boxes were carefully packed, strapped and sealed and marked "shipped in bond" and that a customs clearance in quadruplicate signed and sworn to was indorsed or signed by John McLean, counsel general at Kanagawa (which is Yokohama), showing that entrance of the goods was to be made at the port of St. Louis. Under this state of facts it was clear that the goods were entitled to direct importation to the port of St. Louis as provided by § 3102 U. S. R. S. 1878, 2 ed., and as all the railroads that carried the goods were bonded roads there was no occasion for their diversion to the port of St. Paul.

The Canadian Pacific Railway Co. had in its possession one of the quadruplicate clearance certificates and was by it and by the marks and brands on the boxes apprised of the fact that the goods were shipped in bond and entitled to continuous and unbroken carriage to the port of St. Louis but for its own convenience, as stated in the agreed statement of facts, changed the bonded destination of the goods to the port of St. Paul. After this diversion and the assessment of the customs due on the importation by the collector of customs at St. Paul, it was indispensible to regain possession of the goods so as to continue their transit that the import
53 duties should be paid at St. Paul. And the contention of appellant is that as their payment was in discharge of a lien the United States had on the goods, which in any event had to be discharged, before the respondent could gain possession of them, that he was not prejudiced by the payment made at St. Paul and that as appellant could only have the goods for carriage by agreeing to pay the amount of customs dues, that a lien for such advancement should be declared in its favor. In view of the fact that the appellant agreed to pay the amount under the impression that it represented advanced charges for the carriage of the goods by its predecessors and had no knowledge or information that it represented customs dues, it seems somewhat of a hardship to deny the

relief prayed for. But legal and equitable principles and rules cannot be stretched beyond proper bounds to relieve a litigant of every hardship in which a court of law or equity may find him. The lien of the United States for import duties was not to be discharged at St. Paul but at St. Louis. The amount of the lien was not to be ascertained at St. Paul but at St. Louis and they were not to become due or payable until the goods were carried to their final destination and delivered at the port of St. Louis for appraisement and assessment of import duties. Their payment at St. Paul was not necessary nor an incident to the transportation of the goods to the place of destination; on the contrary the diversion of the goods to the port of St. Paul, which made the payment of the assessed dues necessary to continue the goods in transit, was in violation of the United States customs laws as well as of the contract of shipment made with the Canadian Pacific Railway Co. The appellant as a succeeding carrier to establish a right of lien must derive that right through the wrongful diversion of the bonded destination of the goods by the Canadian Pacific Railway Co.; though innocent of this
54 wrong it is as much affected by it in respect to the rights of the lien on the goods as if *it* had perpetrated the wrongful diversion. Its rights in this regard are derivative and can rise no higher than their original source—the Canadian Pacific Railway Co.—an equity cannot be founded upon a wrong, nor derived from a violation of both law and contract. Whatever rights, if any, appellant may have to recover the amount it has paid for respondent's use and benefit, we think it is clear, both upon reason and authority that it has no lien on the goods replevied for reimbursement and affirm the judgment. Judge Goode concurs, Judge Bond dissents and files a separate opinion.

C. C. BLAND.

Separate Concurring Opinion.

I agree with Judge Bland.

Plaintiff made a contract for the shipment of the goods in question in bond and under the seal of the American consul at Yokohama, for the purpose of preventing an inspection of them by customs officers until they arrived at St. Louis, the port of destination. The United States statute gave him the right to ship them in that way. Both his statutory and contract rights were ignored by diverting them to St. Paul. The diversion was for the convenience of the Canadian Pacific Railway Co. merely, and is Pearce to be compelled to pay anyhow? The duties were not properly collectible at that port, because the Federal officials had no right to
55 ignore the Federal statute which made them collectible in St. Louis, whither the manifest showed they were consigned "in bond" unless they were voluntarily turned into another customs house. Guesnard *v.* Railway Co., 76 Ala. 452. This puts all the equities on the side of the respondent, so that no lien could equitably arise in favor of the company which paid the import duties at

St. Paul or in favor of a subsequent one which agreed to reimburse that one. If the theory of the rule allowing a lien is that the carrier acts as the owner's agent in paying the charge as is said in Overton on Liens, § 140, how could any company have paid at St. Paul, as the agent of Pearce, against the latter's direction and wish? If the contract of shipment had been complied with, the damage to the goods would have been avoided. A carrier paying such demands assumes the risk of their validity. It is true the owner would have to pay the imports at St. Louis but then he would have obtained the benefit of his contract for a through shipment without unpacking.

But I know of no law which gives a carrier the right to pay import duties and retain a lien on the goods for reimbursement. Such liens are usually confined to claims or demands connected with the cost of transportation. Steamboat Virginia *v.* Kraft, 25 Mo. 76; Rushforth *v.* Hadfield, 6 East 519; Faith *v.* East India Co., 4 B. & Ald. 630; Hutchinson on Carriers, 2 ed. § 478. The lien for carriage is jealously regarded and restricted. Hutchinson, § 477; McFarland *v.* Wheeler, 26 Wend. 467; Railway Co. *v.* Hunt, 15 Lea. 261; Overton on Liens, § 134. I concede that the reason for the rule allowing railway companies a lien for back charges for transportation, might well extend it to embrace a claim of this kind, on proof that there is a general custom for carriers to pay import duties, charge the same against the owner of the property and collect them be-
56 fore delivery. This would depend on a usage of trade for, unquestionably, it is opposed to the common law and there is no statute. White *v.* Vann, 6 Humph. 73. There is no proof either in the testimony or the agreed statement of facts in this cause, as to any such custom nor is one plead by the defendant. The record is silent on the subject, and it is not a matter of such general notoriety, in my opinion, that the court would be justified in taking judicial notice of it.

RICHARD L. GOODE.

In the St. Louis Court of Appeals, March Term, 1901.

CHARLES E. PEARCE, Respondent, *v.* WABASH RAILROAD CO., Appellant. } No. 7767. Appeal from Circuit Court, City of St. Louis.

Dissenting Opinion of Judge Bond.

This action is not brought against a carrier for damages on account of loss or injury to goods occurring during their transportation. It is simply a suit to obtain possession of the goods after their arrival at the point of destination without paying to the delivering carrier the Government dues, for the importation of the goods, which were collected at the port of St. Paul and which the defendant, the ladt carrier, paid as advance charges in order to

obtain the goods and carry them to their owner. The ground
57 of refusal to refund this payment relied upon by respondent is, that by his contract, in Japan, with the initial carrier, it (the tariff) was to be collected at the port of St. Louis, which was also the place of destination of the goods, and that inasmuch as the sum so paid by the carrier was assessed by the customs officers at St. Paul instead of St. Louis—although the same in amount—he, the owner, should be entitled to receive the goods at St. Louis without repaying the delivering carrier what it had advanced. In other words, respondent's theory, and the judgment in his favor of the lower court, would give him his goods scot-free of duty. This is the ultimate position of the respondent under the record before us. In support thereof, he insists that the Government tax was collected in St. Paul by reason of the unlawful delivery of the goods to its officers at that place by the preceding carrier. Granting this for the argument, still it only tends to prove that he would be entitled to an action against the initial carrier or the other carrier which diverted the goods, for any damages caused by the acts of the customs officers at St. Paul. It does not at all prove that he should receive his goods without paying the duties leviable thereon under the Federal law. The fact that such duties were collected at one port rather than another, did not destroy the right of the Government to the imposts themselves. It may have constituted a ground for relief in the Court of Claims, or elsewhere, for injuries to the goods occasioned by the assessment of duties at a particular customs house; but it could not exempt the goods from all liability for the paramount claim of the Government enforceable *in rem* and without satisfaction of which, neither the owner nor his agents could obtain the property.

58 It appears this Government lien on the goods was paid, in the case at bar, by appellant and those acting for it; that the goods when delivered to appellant for final carriage to their destination, were accompanied by a way-bill including this Government charge, as a part of the forwarding charges; that appellant on behalf of the owner satisfied and discharged it; that the sum thus paid was the correct amount of the duties to which the goods were subject, and hence was not illegal. The *power* of the Government to enforce it was absolute. To release the Government's hold on the goods, it was paid. If this had not been done the importation of the goods would have ended at the port of entry where it was assessed. To reimburse the first paying carrier, it was exacted of appellant as a forwarding charge. Possessing these incidents and coming to appellant's notice in this manner and as a condition of further transportation of the goods, the payment thereof on behalf of the respondent in his absence and the existing exigency, was made upon grounds affording a fair inference of agency for him and which entitled appellant to subrogate to the liens of the Government for the charges of importation. And even if that lien did not technically arise until the goods got to St. Louis, still the payment made by appellant was a *satisfaction in anticipation* of a lien

which must accrue in full vigor at St. Louis and, therefore, entitled appellant, when the goods arrived at that point, to be subrogated to the right of the Government the same as if it had delayed the payment of the Government dues until that point had been reached.

59 For there (St. Louis), it had the unquestionable right to satisfy the claim of the Government upon the goods before delivering them to the consignee. Steamboat Virginia *v.* Kraft, 25 Mo. 76.

I hold that the plaintiff has no right to recover in this action hence, I cannot concur in the able opinion of my brothers Bland and Goode.

HENRY W. BOND.

And upon the delivery of said opinions, and on the same day, the following judgment was rendered:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767. Appeal from Circuit Court, City of St. Louis.

Now again come the said parties by their respective attorneys and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court of the city of St. Louis, be in all things affirmed and stand in full force and effect; that said respondent recover of said appellant his costs and charges herein expended and have execution therefor. Opinion filed. Separate concurring opinion by Judge Goode filed; dissenting opinion by Judge Bond filed.

And afterwards to-wit: on the 14th day of May, 1901, the appellant filed the following motion in said St. Louis court of appeals:

60 CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant. } No. 7767.

Now comes the appellant and states to the court that one of the material issues involved in the above entitled cause involves the construction and validity of a statute of the United States, regulating the importation of goods into the United States from foreign countries.

Wherefore, appellant prays this honorable court to transfer said cause to the supreme court of Missouri.

GEO. S. GROVER,
Attorney for Appellant.

And afterwards to-wit: on Saturday, May 18th, 1901, the following among other proceedings were had in said St. Louis court of appeals:

CHARLES E. PEARCE, Respondent,
v.
WABASH RAILROAD COMPANY, Appellant.

Now at this day the court having fully considered appellant's motion to transfer this cause to the supreme court of this *this*
61 State, doth order and adjudge that said motion be overruled.

STATE OF MISSOURI, }
City of St. Louis, } ss:

I, John H. Murphy, clerk of the St. Louis court of appeals, do hereby certify that the above and foregoing is a full and complete transcript of the record and proceedings had in the above entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in the city of St. Louis, this, the eleventh day of April, A. D. 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

62 The petition of the Wabash Railroad Company respectfully shows that on the seventh day of May, A. D. 1901, the St. Louis court of appeals, of the State of Missouri, rendered a final judgment against your petitioner, in a certain cause, wherein Charles E. Pearce was plaintiff, and your petitioner was defendant, for possession, and one dollar damages, and for costs, and awarded execution thereon, as will appear by reference to the record and proceedings in said cause; and that said court is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment (or decree) to the Supreme Court of the United States, by writ of error, under section 709 of the Revised Statutes of the United States, because the defense in said action was based upon an authority exercised under a statute of the United States, as appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation and supersedeas; and your petitioner will ever pray, etc.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER, *Its Attorney.*

Let the writ of error issue as prayed.

C. C. BLAND,
Presiding Justice, St. Louis Court of Appeals.

Bond in the sum of $500 to be taken and approved by the clerk of this court.

C. C. BLAND, *P. J.*

63 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the St. Louis court of appeals, of the State of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles E. Pearce, plaintiff and The Wabash Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute, of or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Wabash Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to

64 the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid, at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court, on or before the 21st day of April 1902, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District, Missouri.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-second day of March, in the year of our Lord one thousand nine hundred and two.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, dated as aforesaid.

JAMES R. GRAY,
Clerk of the United States Circuit Court,
Eastern Division, Eastern Judicial District of Mo.

65 STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, John H. Murphy, clerk of the St. Louis court of appeals, within and for the State of Missouri aforesaid, in obedience to the mandate of the within writ, transmit to the honorable Supreme Court of the United States, a full, true and complete transcript of the record and proceedings in the within entitled cause, as fully as the same remain of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this, the eleventh day of April, 1902.

[Seal of St. Louis Court of Appeals, Mo.]

JOHN H. MURPHY, *Clerk.*

[Endorsed:] No.—. —— term, 190–. Charles E. Pearce defendant in error *vs.* Wabash Railroad Co. plaintiff in error. Transcript. Error from St. Louis court of appeals. E. C. Kehr att'y for D. E. Geo. S. Grover att'y for P. E. Filed ——, 190–. —— —— clerk. $32.50 transcript fee, due paid by —— —— $10.00 docket fee, paid by —— —— Trial judge —— ——.

Endorsed on cover: File No. 18,643. Missouri St. Louis court of appeals. Term No. 112. The Wabash Railroad Company, plaintiff in error, *vs.* William N. Pearce and The Mississippi Valley Trust Company, executors of Charles E. Pearce, deceased. Filed August 13th, 1902.

10628

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 112.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

WILLIAM N. PEARCE AND THE MISSISSIPPI VALLEY TRUST COMPANY, EXECUTORS OF CHARLES E. PEARCE, DECEASED.

In Error to the St. Louis Court of Appeals of the State of Missouri.

STATEMENT.

The facts in this case are undisputed, as it was submitted upon a stipulation and accompanying exhibits, which, with the addition only of the plaintiff's own testimony, constitutes the entire record. Briefly stated, such facts are as follows:

The distinguished defendant in error, Major Pearce, now deceased, who appeared below *pro se*, was, in 1895, making a pleasure trip around the world, and at that time shipped four cases of curios from Yokohama, Japan, to St. Louis, Missouri, via the Canadian Pacific Railway steamer, Empress of India.

A bill of lading, in the ordinary form, was issued by the steamer, which is correctly reproduced in this record on pages 11 to 14, inclusive, in which the consignees named in the contract of shipment was Wilfred Schade and Company, St. Louis, Missouri.

The bill of lading and all interest therein was duly signed by said consignees to the plaintiff, a fact of which the plaintiff in error was never advised until after this controversy arose.

The contract of shipment contains no reference to, or agreement of any kind, as to the transportation of the goods *in bond*, nor was there any undertaking by the initial carrier, either for itself or for its connecting lines, that such transportation should be free from the inspection and examination of the goods while so in transit by the customs officers of the United States, anywhere, prior to their arrival in St. Louis, Missouri.

It was further stipulated and agreed, in said contract, that each carrier should be liable only *for loss or damage accruing on its own route*.

The goods were, in fact, bonded, and so marked, although not so specified in the bill of lading.

The four cases weighed six hundred and twenty pounds, much less than an ordinary car load.

The steamer Empress of India delivered the cases in question, in good order, to the Canadian Pacific Railway at Vancouver, B. C., properly consigned.

As the four cases weighed less than a car load, as before stated, the Canadian Pacific Railway, for its own convenience, and without being either required, or requested, by either the plaintiff or the defendant, or any other connecting line, so to do, changed the bonded destination of the goods on the way-bill or manifest from St. Louis, Missouri, to St. Paul, Minnesota.

The Canadian Pacific Railway Company transported said goods over its own and connecting line, the Minneapolis, St. Paul and Sault St. Marie Railway, from Vancouver, B. C., to St. Paul, Minnesota.

Upon the arrival of the goods at St. Paul, Minnesota, the first port of entry, the customs officers of the United States took possession thereof, and examined the goods by opening the cases and inspecting the contents of the cases, and thereafter duly assessed the duties thereon, under and in strict accordance with the laws of the United States then in force, which said duties, amounting to the sum of $264.31, were then and there paid to said customs officers in St. Paul, Minnesota, by said St. Paul, Minneapolis and Sault St. Marie Railway, and said duties so paid as aforesaid were placed upon the way-bill or manifest of said goods by said railway as advanced charges, without any other explanation of such item.

St. Paul, Minnesota, is, and was at that time, a port of entry in the United States.

The customs duties above described were, as before stated, duly levied and assessed by the customs officers at St. Paul, under the laws of the United States then and there in force.

The opening and inspecting of said cases by the United States customs officers at St. Paul was also, as before stated, in strict accordance with the laws of the United States then in force. After said inspection, examination, assessment and levy of duties at St. Paul by said customs officers of the United States, said goods were repacked by said officers in said cases, and then and there delivered by said customs officers to said Minneapolis, St. Paul and Sault St. Marie Railway, with said customs duties, amounting to the sum of $264.31, duly levied and assessed thereon by said customs officers, which said sum was duly paid to said customs officers by said railway, and marked as advanced charges without any other explanation thereon on the way-bill or manifest of said goods by said railway.

Said customs duties would have been collected in the city of St. Louis had said goods been transported to said city in bond, without breaking bulk, instead of to St. Paul, and, pending said collection, as well as during the examination and inspection of said goods by said United States customs officers, said officers would have retained the custody, control and possession of said goods until said duties or customs charges were paid.

After paying the charges on said goods to the customs officers of the United States at St. Paul, and after the redelivery of said goods to it by said officers, said Minneapolis, St. Paul and Sault St. Marie Railway delivered said goods at St. Paul to the Chicago, Milwaukee and St. Paul Railway, and then and there collected said customs duties and charges, amounting to said sum of $264.31, from said Chicago, Milwaukee and St. Paul Railway.

The Chicago, Milwaukee and St. Paul Railway transported said goods over its line of railway from St. Paul, Minnesota, to Given, Iowa, and there delivered said goods to the defendant, and in July, 1895, the defendant paid to Chicago, Milwaukee and St. Paul Railway the following sums on these goods:

Advanced charges, - - - - -	$264.31
Freight charges, - - - - - -	1.24
Total, - - - - - - -	$265.55

This sum was charged to defendant by its connecting line, as before stated, in the usual course of business, at the time of delivery in June, 1895, and was paid by the defendant later, as a traffic balance, in accordance with the usual custom then, as now, existing between connecting lines of railway.

At the time of the payment, the defendant supposed said advanced charges to be the usual and ordinary freight charges upon the goods, and it did not know, as a matter of fact, that the bulk of the charges consisted of customs duties, until after the institution of this suit.

The defendant transported the goods in June, 1895, in due time, and in good order, over its line of railway from Given, Iowa, to St. Louis, Missouri, and there tendered the goods to the plaintiff, upon the payment of said $265.55 advanced charges.

The plaintiff demanded possession of the goods without the payment of said advanced charges.

The defendant refused to do this, whereupon plaintiff instituted this suit, an action of replevin, and took the goods away from defendant by legal process, and has since retained them without the payment of said charges, or any part thereof. *After the plaintiff came into possession of the goods*, which was, of course, after he unpacked them at his residence on Chouteau avenue in the city of St. Louis, the plaintiff then discovered that a piece of antique embroidery was gone, and some other articles were badly damaged, the injury and loss amounting to the sum of three hundred and fifty dollars. This injury and loss he attributed to the unskillful repacking of the goods, which, it is admitted, was done by the customs officers of the United States at St. Paul, long prior to their receipt by the defendant.

This suit was instituted in the Circuit Court of the City of St. Louis, Missouri.

It was tried there, before Hon. Franklin Ferris, circuit judge, sitting as a jury, who found in favor of the plaintiff bellow, the defendant in error here.

The defendant below, the plaintiff in error here, then perfected an appeal to the St. Louis Court of Appeals, where, on May 7, 1901, the judgment below was affirmed by a divided court, Justices Bland and Goode voting for affirmance, and Justice Bond dissenting. (Record, pp. 33 to 39.)

From this ruling the plaintiff was granted a writ of error, to this court, by Chief Justice Bland, of the St. Louis Court of Appeals, on the 22d day of March, 1902, because the defense in said action was based upon "an authority exercised under a statute of the United States" as appears by the record and proceedings in said cause. (Record, p. 40.)

The Issue.

The issue in this case is, therefore, whether Major Pearce can compel the plaintiff in error to transport these goods for him, free of charge, from Given, Iowa, to St. Louis, Missouri, and also compel the defendant to pay the customs duties lawfully assessed and levied on said goods by the customs officers of the United States.

We do not think that such a burden should be imposed upon the plaintiff in error, in the absence of any undertaking upon its part to assume it.

On the contrary, we think that Major Pearce should, in common with all other good citizens, "render unto Cæsar the things which are Cæsar's."

POINTS AND AUTHORITIES.

I.

The answer tendered a defense based upon an authority exercised under a statute of the United States. (Record, p. 4.)

This confers jurisdiction upon this court to hear and determine this controversy.

Section 709, Revised Statutes of the United States; U. S. Compiled Statutes, 1901, Vol. 1, p. 575.

II.

The government of the United States had, until the payment was made to it, a prior and paramount lien on the goods for the duty which Major Pearce has refused to pay.

Overton on Liens, section 656, p. 709, and cases cited;
Hodges vs. Harris, 6 Pickering (Mass.) 360, sections 3095 et seq.;
Revised Statutes of the United States, 1878, pp. 594 et seq., sections 3058 et seq.;
Rev. Stat. U. S. 1901, vol. 2, pp. 2004 et seq.

III.

The plaintiff in error has, also, a valid lien on the goods in question for the charges advanced by it to its connecting line, in the usual course of business.

Ray on Freight Carriers, section 102, p. 407, and cases cited;
Hutchinson on Carriers, 2d edition, section 478a, p. 541, and cases cited;
Schouler on Bailments, p. 544, and cases cited;
Wells vs. Thomas, 27 Mo. 17;
Moore vs. Henry, 18 Mo. Appeals 41;
Armstrong vs. Railway, 62 Mo. Appeals 642;
Gerber vs. Railway, 63 Mo. Appeals 145.

IV.

The case here relied on by the defendants in error (Mellier vs. St. L. & N. O. Line, 14 Mo. App. 281) is not in point, because there was no agreement here to transport the goods in question IN BOND; nor were they, as in Mellier's case, supra, lost in transit by reason of an attempted misdelivery to an irresponsible connecting carrier, who refused to receive them.

V.

Under the contract of shipment in evidence, the plaintiff in error is not responsible for the injury and loss here claimed, as it is conceded that such injury and loss occurred beyond its own line.

Goldsmith vs. R. R., 12 Mo. App. 479;
Orr vs. R. R., 21 Mo. App. 333;
Myrick vs. R. R., 107 U. S. 102;
Coates vs. Express Co., 45 Mo. 238;
Snider vs. Express Co., 63 Mo. 376;
Dimmitt vs. R. R., 103 Mo. 433;
Nines vs. R. R., 107 Mo. 475;
McCann vs. Eddy, 133 Mo. 59.

VI.

The defendants in error cannot recover in this action, because the refusal of the plaintiff in error to deliver the goods until the charges were paid was a proper, and not a wrongful, act.

See authorities cited under Point I, supra.

VII.

The plaintiff in error has a perfect defense to this action under section 3100 of the statutes of the United States, with the subsequent amendments thereto.

Authorities cited, supra.

ARGUMENT.

I.

Again referring to the Record, p. 4, it will be seen that the defense interposed to this action was based upon an authority exercised under a law of the United States. This defense is found in the answer of the defendant below, the plaintiff in error here.

The ninth assignment of error as found in the defendant's motion for new trial (Record, p. 20) was as follows: "Because the court refused to find, as requested by the defendant, that the defendant was not responsible in this case for any injury occasioned by the examination, unpacking and repacking of the contents of plaintiff's boxes, the sole injury here sued for, when, as the evidence shows, such examination, unpacking and repacking was conceded to have been done by the revenue officers of the United States at St. Paul, a port of entry in the United States, *under the authority of and in due conformance to the revenue laws of the United States.*"

The question, therefore, as to whether or not the act here complained of was exercised under the authority of a law of the United States was specially claimed by defendant below, and plaintiff in error here, in its answer.

The finding of the court below was against that contention.

The attention of the trial court was specifically directed to this defense in the motion for new trial, and there again such defense was stricken out. The ruling of the learned judge below was affirmed by the majority opinion of the St. Louis Court of Appeals, so that the issue thus presented arises under section 709 of the statutes of the United States, and is necessarily a federal question over which this court alone has jurisdiction.

This proposition seems to us to be too plain for argument, and for that reason we have not trespassed upon the time and patience of this court by the citation of the numerous authorities in support of it.

II.

Mr. Overton well says that the government of the United States has a paramount lien for the duties upon imported goods, and that such a principle "has been established and settled by a long course of decisions."

This rule is conceded to be correct, by both the majority and minority opinions, delivered in this case, in the St. Louis Court of Appeals.

It is admitted here that such duties upon this shipment amount to $264.31. Their validity is also unquestioned, as is the fact that Major Pearce has refused, and still refuses, to refund these duties to the plaintiff in error, who has been compelled to advance them in the interest of the shipper, in order to facilitate transportation, and in the usual course of business, as an interstate carrier.

Upon this state of facts, the plaintiff in error is unquestionably entitled to a judgment in this proceeding for such duties, against the defendants in error, and also for costs.

Gerber vs. Ry., 63 Mo. App. 145.

III.

It is also an admitted fact here that the plaintiff in error advanced to its connecting line,

Advanced charges (government duties), -	$264.31
Freight charges, - - - - - -	1.24
	$265.55

The validity of both of the above items is unquestioned.

Judge Ray thus lays down the correct rule as applicable to such cases: "A connecting carrier which advances the charges of the preceding one at the usual rates, without notice of any special arrangement between it and the owner, can demand of the consignee payment of the charges so advanced, and the owner must look for reimbursement to the contracting carrier upon its guaranty."

Mr. Hutchinson thus states it: "But the lien will extend to and embrace advances made to preceding carriers, for their charges for the portion of the transportation performed by them; and the ultimate or final carrier may refuse to deliver the goods until his own charges and all such advances have been paid."

Mr. Schouler says: "A common carrier, then, may usually retain particular goods, by virtue of his lien right, until the freight and charges are paid or tendered him, and he cannot be compelled to give them up sooner.

This lien, moreover, extends to all the proper freight and storage charges upon the goods throughout the whole of a continuous transit over successive lines, since the last carrier or final warehouseman may advance what was lawfully due his predecessors, and hold the property as security for his reimbursement."

The principle above quoted has been settled in Missouri for forty-five years. In Wells vs. Thomas, 27 Mo. 17, decided in 1858, the supreme court of that state held that the last carrier in the line could hold the property until the advanced charges were

paid, "although such sum should exceed the amount for which the company that first received the goods agreed they should be transported."

In Moore vs. Henry, 18 Mo. App. 41, it was held that it was the duty of the last carrier in the line to receive property from a connecting line, and that it was its right to pay the back charges thereon, for the payment of which it would retain a lien on the goods, as well as for its own freight bills.

In Armstrong vs. Railway, 62 Mo. App. 643, it was said: "It is the well-settled law that every carrier through whose hand goods are shipped, becomes the agent of the owner, and has implied authority from him, as such agent, to advance previous charges upon them and collect them again from the next carrier or warehouseman into whose hands he delivers them."

And, in Gerber vs. Railway, 63 Mo. App. 149, a replevin suit, a judgment was entered, under directions from the appellate court, for the amount of such advanced charges, together with costs, against the plaintiff.

This is exactly what the plaintiff in error is entitled to, and what it asks in this cause, upon the admitted facts found in this record.

IV.

The case here relied on by the defendants in error, Mellier vs. St. Louis and New Orleans Transportation Company, 14 Mo. App. 281, has not the slightest application to this controversy.

In that case the bill of lading, or contract of shipment, expressly provided for the transportation of the goods from New Orleans to St. Louis "*in bond.*"

There is no such provision or undertaking to be found in the bill of lading in the case at bar.

There, after making a contract to transport the goods *in bond*, as above stated, from New Orleans to St. Louis, the contracting carrier sold its boats and ceased business as a common carrier. The goods were then tendered to another carrier, who refused to either receive or transport them, resulting in a loss of the goods.

Upon that state of facts the court very properly, we think, held the contracting carrier responsible for the loss.

Here, no contract to transport the goods *in bond* was ever made. In lieu of that, an agreement was made to transport the goods from Yokohama to St Louis. This agreement was fully and faithfully carried out by the contracting carrier and its connecting lines. But because the government officers, in the lawful discharge of their duty in the premises, took possession of the goods at St. Paul, an intermediate point between Yokohama and St. Louis, and examined and assessed the proper revenue duties on them for the government, which one of the carriers paid, the

defendants in error have not only refused to pay such proper charges, but have taken the goods out of plaintiff in error's possession, and now insists that the amount of such duties and freight charges so advanced by the plaintiff in error for them, to its connecting line, in the usual course of business, shall not be refunded to it by them.

The proof here is also that these goods were transported *in bond* from Yokohama to St. Louis. In other words, in the Mellier case here relied on, there was clear and undisputed proof of a breach of the contract of shipment on the part of the contracting carrier, while here the proof is that the contracting carrier and its connecting lines have faithfully performed all the terms of their agreement to transport and deliver the goods in question.

V.

It is also contended by the defendants in error that the act of the Canadian Pacific Railway in changing the bonded destination of these goods from St. Louis to St. Paul was wrongful, because it necessitated an examination and inspection of the goods by the government officers in St. Paul, whereby the repacking of the goods in the cases by such officers was not as skillfully and as carefully done as it had been in Japan, resulting in an injury to the plaintiff.

This contention unnecessarily assumes that the contract of the steamer Empress of India, the original carrier, was to transport these goods *in bond* from Yokohama to St. Louis; whereas, as your Honors will see, no such contract was made. On the contrary, all that the steamer undertook to do was to transport the goods for itself and its connecting lines from Yokohama to St. Louis, and this the proof shows that it did. Besides, it is admitted here that what the government officers did in the way of examination and inspection was precisely what the same officers would have done in St. Louis. It is also conceded that the goods were transported in bond, as a matter of fact, from Yokohama to St. Louis. Now, if the routing of the goods on the way-bills, so far as their bonded character was concerned, by the Canadian Pacific was something which they were authorized to do, or something which they were not forbidden to do by the contract of shipment, then the defendants in error are not entitled to complain. Nor are they entitled to complain here, if the levy and assessment of duties at St. Paul, after an examination of the goods, was precisely the same as it would have been had the goods been transported through to St. Louis and there been examined and inspected. In either event, viewing the transaction with special reference to the contract of shipment, the changing of the bonded destination was neither wrongful, nor did it affect Major Pearce.

If the government officers improperly repacked his boxes, he had, then, and his executors still have, an action against them. If the Canadian Pacific Railway improperly changed the bonded destination, the executors have action against that company; and that company, as your Honors know, has an office for one of its lines in this city and in this state, where such an action could be instituted by the executors of Major Pearce, if they so desired. But the plaintiff in error, a mere connecting carrier, who was not a party to the contract and who it is conceded has done no wrongful act, is entitled to be reimbursed by the executors of Major Pearce for the government duties on these goods which it has advanced in the shape of advanced charges, and for the freight charges, also, which it has advanced upon the same property.

The plaintiff in error has committed no wrongful act in this whole transaction, from beginning to end. The goods were delivered to it in Iowa, and under the laws of that state, as well as the laws of Missouri, it was compelled to receive them. The advanced charges on them, which are conceded to be lawful, it was compelled to pay. The defendants in error are not entitled to recover here of the plaintiff in error, and it is entitled to be reimbursed by the defendants in error; therefore, this action cannot be maintained whatever may be the defendants in error's claim either against the government of the United States or against the Canadian Pacific Railway. We respectfully insist that there can be no escape from this reasonable and correct proposition of law.

Again, when the contract of shipment in this cause is examined, it will be found (Defendant's Abstract of Record, p. 20) that neither the Canadian Pacific Railway nor any of its connecting lines ever undertook to become responsible for these goods beyond its own route.

This agreement can be invoked by the plaintiff in error, as it has been specially admitted, thus avoiding the necessity of pleading it, as it is a part of this record.

Halliday vs. R. R., 74 Mo. 159.

Section 598 of the Revised Statutes of Missouri has no application to this contract, as that statute has no territorial force in such a case as this.

Stanley vs. R. R., 100 Mo. 435.

The rule, therefore, applicable to this shipment is that the defendant was only bound to carry the goods safely over its own route, and this duty was, as the proof shows, fully performed by it.

Myrick vs. R. R., 107 U. S. 107.

And this agreement is not only lawful, even as against section 598, *supra*, but is also valid at common law.

Upon this point your Honors will find the leading cases in Missouri cited under point V of this brief.

So that, as the only agreement plaintiff in error ever made with Major Pearce was to transport these goods in due time and in good order over its own line, and as the proof shows that such undertaking was fully and faithfully performed by the plaintiff in error, the defendants in error were not entitled to recover in this action, and should have been non-suited.

VI.

The allegation in the petition is that defendant "unlawfully detained" the property in question, while the proof is that it did nothing of that kind. It is admitted that the damage here complained of was the result of the unskillful repacking of the goods at St. Paul by the customs officers of the United States there, then acting under valid statutes of the United States authorizing such examination and inspection. Section 3100 of chapter 11 of title xxxiv, contains full and complete authority for such acts.

Whether it was, or was not, is immaterial here, as plaintiff in error's responsibility in the premises was expressly limited, by the contract of shipment, to what occurred on its own line.

The damages here sued for were not caused by the plaintiff in error, nor is it responsible for them.

Its detention of the goods until the charges advanced by it had been refunded to it was lawful and proper, and, therefore, not wrongful. For that reason alone the defendants in error were not entitled to maintain this action.

VII.

By section 3100 of the Revised Statutes of the United States (Rev. Stat. 1878, p. 595), Rev. Stat. U. S. 1901, vol. 2, p. 2027, "all merchandise, * * * * and all other articles imported into the United States from any contiguous foreign country, except as hereinafter provided, * * * shall be unladen in the presence of and be inspected by an inspector, or other officer of the customs, *at the first port of entry or custom house in the United States where the same shall arrive.*"

It is conceded in this case that St. Paul, Minnesota, was not only a port of entry, but that it was the *first* one at which, in the United States, these goods *first* arrived. Their examination and inspection at St. Paul, here constituting the sole ground of complaint in this case, was, therefore, as admitted in the stipulation here on file and as the statute above quoted expressly provides, a

necessary, proper and lawful act, which cannot form a basis for an action in tort. If the plaintiff below and defendant in error here or his agents had desired to avoid this inspection *en route*, he or they could have applied to the proper United States officers, either at Vancouver or St. Paul, to seal and close the goods under section 3102 of the same statute, although even then, as the court will see from the latter part of that section, that the goods were still subject to examination to prevent frauds upon the revenue.

By chapter 190, vol. 1, Supplement Rev. Stat. U. S. 1891, p. 294, of the act of June 10, 1880, St. Paul was made a port of entry. By the substitute for the act of 1880, approved February 23, 1887, vol. 1, Supplement Rev. Stat. U. S. 1891, p. 540, Rev. Stat. U. S. 1901, vol. 2, p. 2027, it is expressly provided that merchandise transported under the provisions of that act shall be conveyed in cars *securely fastened with locks and seals, under the exclusive control of the officers of the customs.*"

It is not averred in this action, nor was it proved, that Major Pearce, or his agents, ever attempted to avail themselves of the provisions of the statutes above quoted.

If they had done so, this controversy might have been avoided by them. Their failure to do so destroys their right of recovery here.

Conclusion.

The view here contended for, by plaintiff in error, is so appropriately expressed in the dissenting opinion of Justice Bond in the St. Louis Court of Appeals (Record, pp. 37, 38, 39), that we have ventured to reproduce a portion of it here.

If it is adopted by this court, as we hope it will be, it will not be the first instance in which the dissenting opinion of that learned judge has finally prevailed and has been adopted as the ultimate law of the case in the courts of last resort.

"The ground of refusal to refund this payment relied upon by respondent is, that by his contract in Japan with the initial carrier, it (the tariff) was to be collected at the port of St. Louis, which was also the place of destination of the goods, and that inasmuch as the sum so paid by the carrier was assessed by the customs officers at St. Paul instead of St. Louis— although the same in amount—he, the owner, should be entitled to receive the goods at St. Louis without repaying the delivering carrier what it had advanced. In other words, respondent's theory, and the judgment in his favor of the lower court, would give him his goods scot-free of duty. This is the ultimate position of the respondent under the record before us. In support thereof, he insists that the government tax was collected in St. Paul by reason of the unlawful delivery of the goods to its officers at that place by the preceding carrier. Granting this for the argument, still it only tends to prove that he would be entitled to an action against the initial

carrier, or the other carrier which diverted the goods, for any damages caused by the acts of the customs officers at St. Paul. It does not at all prove that he should receive his goods without paying the duties leviable thereon under the federal law. The fact that such duties were collected at one port rather than another did not destroy the right of the government to the imposts themselves. It may have constituted a ground for relief in the court of claims, or elsewhere, for injuries to the goods occasioned by the assessment of duties at a particular customs house; but it could not exempt the goods from all liability for the paramount claim of the government enforceable *in rem*, and without satisfaction of which neither the owner nor his agents could obtain the property.

It appears this government lien on the goods was paid, in the case at bar, by appellant and those acting for it; that the goods when delivered to appellant for final carriage to their destination were accompanied by a way-bill including this government charge as a part of the forwarding charges; that appellant on behalf of the owner satisfied and discharged it; that the sum thus paid was the correct amount of the duties to which the goods were subject, and hence was not illegal. The *power* of the government to enforce it was absolute. To release the government's hold on the goods, it was paid. If this had not been done the importation of the goods would have ended at the port of entry where it was assessed. To reimburse the first paying carrier, it was exacted of appellant as a forwarding charge. Possessing these incidents and coming to appellant's notice in this manner and as a condition of further transportation of the goods, the payment thereof on behalf of the respondent in his absence and the existing exigency, was made upon grounds affording a fair inference of agency for him and which entitled appellant to subrogate to the liens of the government for the charges of importation. And even if that lien did not technically arise until the goods got to St. Louis, still the payment made by appellant was a *satisfaction in anticipation* of a lien which must accrue in full vigor at St. Louis and, therefore, entitled appellant, when the goods arrived at that point, to be subrogated to the right of the government the same as if it had delayed the payment of the government dues until that point had been reached.

For there (St. Louis) it had the unquestionable right to satisfy the claim of the government upon the goods before delivering them to the consignee. (Steamboat Virginia vs. Kraft, 25 Mo. 76.)

I hold that the plaintiff has no right to recover in this action, hence I cannot concur in the able opinion of my brothers Bland and Goode."

We can add nothing to the admirable review of the issue in this case, above quoted, except to say that throughout this entire transaction, as this record shows, the plaintiff in error did nothing except to fully perform its duty as a common carrier in the interstate transportation of goods imported into the United States from a

foreign country, and, in so doing, advanced certain customs duties upon such shipment, lawfully imposed by the revenue officers of the United States at the first port of entry. All this had been accomplished before the plaintiff in error received these goods, and before the goods were delivered to it by the preceding and connecting carrier.

As agent for the shipper, and in order to facilitate such transportation of these goods, it advanced these customs duties to the next preceding carrier in the usual course of its business.

It transported these goods over it own line, in due time, and in good order, under a contract, which limited the liability of each carrier to its own line.

The sole complaint here is that the customs officers of the United States at St. Paul, the first port of entry, in lawfully examining, unpacking and repacking the goods there, and in lawfully assessing such customs duties thereon, failed to repack the goods as skillfully as they had been packed originally in Japan, resulting in a loss of and injury to some of the articles.

All these facts are conceded, and it is also admitted, that exactly the same course would have been pursued by the customs officers in St. Louis.

So that when these goods were transported in a bonded wagon, as they would have been, from the custom house, on Eighth and Olive streets, to the residence of Major Pearce, on Chouteau avenue, after being repacked, after examination, at the custom house in St. Louis, in that city, exactly the same loss or injury as here complained of might, and in all probability would, have occurred.

So that in its last analysis the cause of action here stated, if any exists, should properly be heard and determined in the court of claims, or in some forum other than the one in which this case was tried, and, in that event, the suit should not be prosecuted against this plaintiff in error.

In any event, and from any point of view, there ought not to have been a recovery below, or in the appellate court, against the plaintiff in error, upon the admitted facts of this record.

We therefore, for the reasons above stated, respectfully ask for a reversal of the judgment below, with directions to the St. Louis Court of Appeals to enter a judgment there in favor of the plaintiff in error for the amount of the customs duties and freight charges advanced by it, as the agent of the defendants in error, and in their interest, in this case, amounting in all to the sum of $265.55, with accrued interest thereon.

Respectfully submitted,

WELLS H. BLODGETT,
GEORGE S. GROVER,
Attorneys for Plaintiff in Error.

10637

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 112.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM N. PEARCE AND THE MISSISSIPPI VALLEY TRUST COMPANY, EXECUTORS OF CHARLES E. PEARCE, DECEASED.

IN ERROR TO THE ST. LOUIS COURT OF APPEALS OF THE STATE OF MISSOURI.

STATEMENT.

The plaintiff, Pearce, being the owner of four cases of curios which the Wabash Railroad Company refused to deliver to him, brought a replevin suit against the company in the Circuit Court, City

of St. Louis, to recover possession of the goods valued at $1,000.

The railroad company answered, setting up as an affirmative defense, that in the month of June, 1895, it received from the Chicago, Milwaukee & St. Paul Railway, at Given, Iowa, the four cases of curios in question; that as then and there represented to it by its connecting line, the charges then due upon said shipment amounted to $265.55, which sum was paid by the defendant in the usual course of business to the said Chicago, Milwaukee & St. Paul Railway; that after the institution of this suit, the defendant ascertained, for the first time, that said goods were imported into the United States by the plaintiff from a foreign country, to wit, Japan, and that said goods had been transported by the Canadian Pacific Railway from its western terminus, Vancouver, to Sault St. Marie in bond and there delivered to its connecting line, the Minneapolis, St. Paul & Sault St. Marie Railway for transportation to St. Paul, Minnesota; that at the latter place, the customs officers of the United States took possession of said goods, examined and appraised them and assessed the sum of $265.55 as custom duties due to the United States and a first lien upon the said goods; that said Minneapolis, St. Paul & Sault St. Marie Ry. paid the said duties "in order to get possession of said property so that it could be transported over its line of railway and its connecting lines to its final destination in the city of St. Louis, Missouri." That said duties so paid were collected by it as advance charges from its connecting line,

the Chicago, Milwaukee & St. Paul Railway, which, in its turn, duly transported said goods to the end of its line of railway, to wit, Given, Iowa, and there delivered the same to the defendant. The answer then charges: —

"That in so paying said duties as aforesaid, the said Chicago, Milwaukee & St. Paul Railway, and this defendant, each for itself, became and was subrogated to all the rights of the United States therein, and was and is thereby entitled to a first lien on said goods under the laws of the United States for the amount of said duties so paid by them severally as advance charges upon said property for and in behalf of the plaintiff. * * *

"Wherefore, defendant says that plaintiff is not entitled to have or maintain this action; and defendant further prays the court in this cause to enter a decree establishing said duties on said goods so paid by defendant as herein set forth for and on behalf of plaintiff as aforesaid as a first and paramount lien upon the property in controversy, and requiring plaintiff herein to pay said duties in full to the defendant before obtaining in this court a final order for the possession of the goods herein described." * * *

The reply alleges that on the 3d day of May, 1895, at the city of Yokohama, Japan, the Canadian Pacific Railway Company, a common carrier, received said four boxes of curios to be transported in bond to St. Louis, Missouri, a port of entry and delivery, and that plaintiff prepaid the freight charges

to St. Louis; that each of the four cases was plainly marked on the outside as shipped "in bond" to St. Louis, but that before their arrival in St. Louis and whilst in the custody of the Canadian Pacific Railway Co., and its connecting lines, the boxes were opened and a portion of their contents of the value of $350.00 was lost and destroyed.

The case was tried in the Circuit Court upon an agreed statement of facts and the plaintiff's testimony.

The agreed statement of facts admits:—

That the plaintiff is the owner of the goods, and that they were shipped from Yokohama in bond to St. Louis.

That the Canadian Pacific Railway for its own convenience, without notice to or the request of the plaintiff, or any of its connecting lines, changed the bonded destination of said goods from St. Louis, Missouri, to St. Paul, Minnesota.

That upon their arrival in St. Paul the customs officers of the United States took possession of the cases in question, opened and inspected them and assessed the duties thereon at $264.31, which sum was paid by the Minneapolis, St. Paul and Sault St. Marie Railway, and was placed upon the waybill by said railway as advance charges.

This suit was brought on the 25th of June, 1895. The Wabash Railroad Company did not pay the charges until the 29th day of July following and with full knowledge that they were the import

duties on the goods assessed and paid at St. Paul (see letter of Mr. George S. Grover, Rec., p. 31).

The Circuit Court found the issues for the plaintiff and gave him judgment for the possession of the goods. After an unsuccessful motion for new trial, the defendant appealed to the St. Louis Court of Appeals where the case was twice heard, resulting each time in an affirmance of the judgment below (Rec., p. 32). The opinion of the court is copied in the record, beginning on page 33, and is also reported in —

Pearce v. Wabash R. R. Co., 89 Mo. App. 437.

After the affirmance of the judgment in the Court of Appeals, the cause, upon petition of the Wabash Railroad Co., was removed by certiorari to the Supreme Court of Missouri. The Supreme Court, in its opinion, states: —

"The petition for the writ of certiorari was based upon the allegation that the St. Louis Court of Appeals had exceeded its jurisdiction or was without jurisdiction because 'the validity of a treaty or statute of or authority exercised under the United States is drawn in question' in the case of Pearce v. the railroad aforesaid, and that the defendant in that case had invoked and been denied the protection of such Federal statute or authority. And it was upon this showing and claim that the writ of certiorari was issued."

Upon the hearing, the plaintiff Pearce moved to quash the writ on the ground that no Federal right had been denied the relator. The court after a full examination of the record, took that view and quashed the writ.

State ex rel. v. Bland, 168 Mo. 1.

The Wabash R. R. Co. then sued out this writ of error.

POINTS AND AUTHORITIES.

I.

There is no Federal question in the case and the writ of error should be dismissed.

1. The question was adjudicated between the parties by the Supreme Court of Missouri.

State ex rel. v. Bland, 168 Mo. 1.

The Supreme Court of the United States is bound by the decision of the State court in regard to the meaning of the constitution and laws of its own State, and its decision upon such a state of facts raises no Federal question.

Turner v. Wilkes Cty. Coms., 173 U. S. 461–3;
Central Land Co. v. Laidley, 159 U. S. 103.

2. The supposed subrogation by virtue of which the Wabash Railroad Co. claims to withhold the plaintiff's property, does not arise under any statute of or authority exercised under the United States.

U. S. Rev. Stat., Sec. 709.

To give the Supreme Court of the United States jurisdiction over the judgment of a State court, it must appear that the decision of a Federal question presented to that court was necessary to the determination of the cause, and that it was actually decided, or that without deciding it, the judgment rendered could not have been given.

Brown v. Atwell's Adm., 92 U. S. 327;
Citizens' Bank v. The Board of Liquidation, 98 U. S. 140;
DeSaussure v. Gaillard, 127 U. S. l. c. 234;
Blount v. Walker, 134 U. S. 607–14;
Jersey City & B. R. R. v. Morgan, 160 U. S. 288;
Sawyer v. Piper, 189 U. S. 154.

Where the Supreme Court of a State decides a Federal question in rendering a judgment and also decides against the plaintiff in error on an independent ground not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed.

Hale *v.* Akers, 132 U. S., 554–64;
Murdock *v.* City of Memphis, 87 U. S. 590–634;
McManus *v.* Sullivan, 91 U. S. 578;
Capital Bank *v.* Cadiz Bank, 172 U. S. 425–30.

II.

St. Louis being a port of entry and delivery, the plaintiff was entitled under the laws of the United States to have his goods shipped and brought to St. Louis "in bond," and at St. Louis to make his "entry" for the purposes of customs payment. The goods having been delivered to and received by the Canadian Pacific Ry., for transportation "in bond" to St. Louis, it became the duty of the carrier to transport the goods "in bond" to St. Louis, and, if so transported, they were not subject to examination and customs assessment at any point other than St. Louis.

U. S. Rev. Stat., Sec. 3102; also Sec. 2994.

III.

The carrier had no right to change the contract destination of said goods, nor to change their consignment from Schade & Co., St. Louis, to F. Jones, St. Paul, nor to do otherwise than to carry said goods "in bond" to St. Louis.

Mellier *v.* St. Louis & N. O. T. Co., 14 Mo. App. 281–92.

IV.

The freight was prepaid to St. Louis. The carrier therefore has no freight lien on the goods. The money advanced in payment of the duties is no

part of the cost of transportation and the carrier acquired no lien on the goods by paying them.

Steamboat Va. v. Kraft, 25 Mo. 76–80;
Hutchinson on Carriers (2 Ed.), § 478.

V.

The railroad company was not subrogated to the government's lien for the import duties.

Aetna Ins. Co. v. Middleport, 124 U. S. 534–47;
Hinchman v. Morris, 29 W. Va. 673;
Griffing v. Pintard, 25 Miss. 173;
Wallace's Estate, 59 Pa. St. 401;
Mercantile Trust Co. v. Hart, 76 Fed. R. 673;
Milwaukee & M. R. Co. v. Soutter, 80 U. S. 517;
German Bank v. U. S. 148 U. S. 573–80;
Wilkinson v. Babbitt, 4 Dill. 207;
Sheldon on Subrogation, § 241, p. 361.

Taxes are not debts. A tax is an impost levied by authority of government upon its citizens for the support of the State.

Carondelet v. Picot, 38 Mo. 125;
Blevins v. Smith, 104 Mo., l. c. 595;
State ex rel. v. Snyder, 139 Mo., l. c. 553.

ARGUMENT.

I.

There is no Federal question in the case.

1. Sec. 12 of Art. VI. of the Constitution of Missouri, adopted in 1875, provides: "There is hereby established in the city of St. Louis an Appellate Court, to be known as the St. Louis Court of Appeals * * * Appeals shall lie from the decisions of the St. Louis Court of Appeals to the Supreme Court, and writs of error may issue from Supreme Court to said court in the following cases only: In all cases where the amount in dispute, exclusive of costs, exceeds the sum of two thousand five hundred dollars; in cases involving the construction of the Constitution of the United States or of this State; *in cases where the validity of a treaty or statute of or authority exercised under the United States is drawn in question;* * * *."

1 R. S. of Mo. 1899, p. 86.

Sec. 5 of the amendment to the above article, adopted in 1884, provides: —

"Sec. 5. In all causes or proceedings reviewable by the Supreme Court, writs of error shall run from

the Supreme Court directly to the Circuit Courts * * * and in all such causes or proceedings, appeals shall lie from such trial courts directly to the Supreme Court, and the Supreme Court shall have exclusive jurisdiction of such writs of error and appeals, and shall in all such cases, exclusively exercise superintending control over such trial courts."

1 R. S. of Mo. 1899, p. 93.

If, therefore, the case of Pearce v. The Wabash R. R. Co. involved a Federal question, it was reviewable by the Supreme Court of the State. Under the writ of certiorari issued upon the petition of the railroad company the cause was removed from the St. Louis Court of Appeals to the Supreme Court of Missouri. The latter examined the record, and held that no statute of or authority exercised under the United States is drawn in question in the case.

It therefore has been found and so adjudged between the parties, that there is no Federal question in this record.

State ex rel. v. Bland, 168 Mo. 1.

It may not be out of place to call attention to the fact that the St. Louis Court of Appeals, to which this writ of error is directed, is the court of final resort only in case no Federal question is involved in the cause. If, on the other hand, a Federal question is involved, then the Supreme Court, under the constitutional provisions above quoted, is the

highest court of the State in which a decision in the suit could be had.

U. S. Rev. Stat., Sec. 709.

2. It has never, for a moment, been questioned that the United States had a lien upon the four cases of curios for the import duties. But it is and always has been denied that the Wabash Railroad Co. was subrogated to that lien. For the purposes of this point, it is sufficient to know that no such right is conferred by a statute of the United States. If the right exists (which we deny) it is conferred by the general principles of equity jurisprudence and not by a Federal statute. There being no such statute, no Federal right has been passed upon or withheld in this case, and hence, there is nothing for this court to review.

If the plaintiff in error could point to a Federal statute subrogating the carrier to the government's lien upon payment of the import duties and could show that it had invoked the benefit of such statute in the court below and that the decision was in denial of the right claimed under the statute, it would present a case reviewable by this court. But as there is no such statute, and hence, no such right was or could be claimed in this case and no decision was or could be made thereon, the case is not within the scope or purview of Sec. 709 U. S. Rev. Stat.

The answer, it will be perceived, does not claim subrogation under any statute of the United States, but makes the claim under the general rules of equity, asking the court to enter a decree estab-

lishing said duties so paid by defendant as a first and paramount lien and requiring plaintiff to pay said duties *in full to the defendant* before obtaining a final order for the possession of the goods.

II.

If the case is to be considered upon its merits, I submit the following views: --

The agreed statement concedes that the plaintiff Pearce is the owner of the goods. He is therefore entitled to their possession unless the defendant is justified in withholding such possession by virtue of a valid lien.

As the freight was prepaid from Yokohama to St. Louis, and as the customs duties are no part of the cost of transportation, the defendant has and can have no freight lien on the goods. Its defense is that by paying the customs duties it became subrogated to the lien of the United States and by virtue of such lien is entitled to hold possession of the goods; and this is the sole question in the case so far as the merits are concerned.

An individual can never be subrogated to the remedies of the government for the enforcement of its laws. But aside from that consideration, and viewing the matter as between individuals, there can be no subrogation in this case for the following reasons: —

1. The railroad company was under no obligation whatever to pay the duties, nor did it pay them

to protect its own property interests. The payment was not made at the request of the owner of the goods; on the contrary, it was made without his knowledge and against his wish. The railroad company is therefore a mere volunteer and cannot claim subrogation.

Aetna Ins. Co. v. Middleport, 124 U. S. 534–47.

2. Import duties are not debts due by the owner, but taxes imposed upon the article itself. The statute says: "There shall be levied, collected and paid upon all articles * * * imported from foreign countries, the rates of duties which are by the schedules respectively prescribed."

U. S. Rev. St., Sec. 2503.

And a lien is given upon the article as the remedy for the enforcement of the tax. But when the duty is paid and the article passes out of the hands of the customs officers, *the lien is extinguished.* It has accomplished its purpose and given the government its due, which is its sole office.

3. It was the plaintiff's right to have the goods transported in bond from Yokohama to St. Louis without unpacking or repacking them. The statute provides that to avoid the inspection at the first port of arrival, the owner, agent, * * * may apply to any officer of the United States * * * to seal or close the same * * *; which officer shall seal or close the same accordingly; whereupon the same may proceed to their port of destination without

further inspection. Every such vessel, car * * * shall proceed without unnecessary delay to the port of its destination * * * and *be there inspected.*

U. S. Rev. Stat., Sec. 3102.

It also provides that merchandise transported in bond " shall not be unladen or trans-shipped between ports of first arrival and final destination * * * And in no case shall there be permitted any breaking of the original packages of such merchandise."

U. S. Rev. Stat., Sec. 2994.

The contract of the Canadian Pacific Ry. and its connecting lines was to carry the goods in bond from Yokohama to St. Louis. In diverting the bonded destination of the goods from St. Louis to St. Paul, the carrier was guilty of a wrongful act. It is claimed in the brief of the plaintiff in error that the railroad company paid the import duties to regain possession of the goods and complete their transportation to St. Louis. The goods were not subject to inspection at St. Paul. That they were so inspected was due to the tortious act of the carrier in diverting their bonded destination. It can gain no advantage from its own wrong, particularly as the plaintiff suffered serious loss as the result of that wrong. The goods were extremely delicate and brittle and required great care and skill in handling them. Having had them carefully packed in Japan, under his own supervision, Major Pearce availed himself of his right to have them shipped in

bond to St. Louis. The purpose of so shipping them was to avoid the danger of having the goods opened and unpacked whilst in transit. But in consequence of the carrier's wrongful act, the packages were opened and unpacked at St. Paul and evidently were negligently or unskillfully repacked, resulting in a loss to the plaintiff.

The doctrine of subrogation will not be applied to relieve a person fron loss occasioned by his own unlawful act.

German Bank v. U. S., 148 U. S. 573–80;
Milwaukee & M. R. Co. v. Soutter, 80 U. S. 517;
Wilkinson v. Babbitt, 4 Dill. 207.

4. The levying of taxes is an attribute of sovereignty. Its own demands having been satisfied, it is not consistent with the dignity or policy of the government to allow its remedies for the collection of revenue to be used by individuals to reimburse themselves. No one can be subrogated to the rights and remedies of the State.

Hinchman v. Morris, 29 W. Va. 673;
Griffing v. Pintard, 25 Miss. 173;
Wallace's Estate, 59 Pa. St. 401;
Mercantile Trust Co. v. Hart. 76 Fed. R. 673.

Respectfully submitted,

EDW. C. KEHR,

Attorney for Defendants in Error.

Supreme Court of the United States.

No. 112.—October Term, 1903.

The Wabash Railroad Company, Plaintiff in Error,
vs.
William N. Pearce and The Mississippi Valley Trust Company, Executors of Charles E. Pearce, Deceased.

In error to the St. Louis Court of Appeals of the State of Missouri.

[January 11, 1904.]

On June 25, 1895, Charles E. Pearce, the testator of the defendants in error, commenced his action in replevin in the Circuit Court of the city of St. Louis, Missouri, to recover from the railroad company four boxes of curios. After answer a trial was had before the court without a jury, resulting in a judgment for the plaintiff, which, on May 7, 1901, was affirmed by the St. Louis Court of Appeals. (89 Mo. App. 437.) An application to transfer the case to the Supreme Court of the State on the ground that it involved the validity of a statute of or authority exercised under the United States was denied, (*State ex rel.* v. *Bland*, 168 Mo. 1,) and thereupon it was brought here on writ of error.

The facts are undisputed, and are as follows: Pearce was the owner of the curios, and in Yokohama, Japan, shipped them to St. Louis. The bill of lading was issued by the Canadian Pacific Railway Company, and recited that the goods were shipped upon the company's steamer, Empress of India, to be carried to Vancouver, British Columbia, and thence over the Canadian Pacific and connecting lines to St. Louis, Missouri. The boxes were carried to Vancouver and thence by the Canadian Pacific Railway Company over its own and a connecting line controlled by it to St. Paul, Minnesota. Upon arrival at St. Paul the custom officers took possession of the boxes, opened and examined the contents, and duly assessed the duties thereon at $264.31, which sum was paid by the railway company and had to be paid in order to regain possession and forward the goods. The goods were thereafter delivered to the Chicago, Milwaukee and St. Paul Railway Company, by it to the defendant at Given, Iowa, and by the latter carried to St. Louis. The inspection at St. Paul was in strict accordance with the laws of the United States and the duties exacted were properly chargeable upon the goods. When the defendant received the goods from the Chicago, Milwaukee and St. Paul Railway Company it became responsible under its traffic agreements for the payment of the

charges then on the goods, including the custom duties, and has since paid those charges. On receipt of the goods in St. Louis they were tendered to the plaintiff upon payment of the charges. The goods were shipped in bond to St. Louis and this was so marked on the boxes. If they had been transported to St. Louis in bond, as they should have been, they would there have been opened and examined and retained in the custody and possession of the custom officers, not only during examination and inspection, but also until the duties were paid.

Mr. Justice BREWER delivered the opinion of the Court.

Two questions are presented—one of jurisdiction and the other on the merits.

With regard to the first, the decision of the Supreme Court of the State is not controlling. It is not the province of a State court to determine our jurisdiction; and further, the Missouri statute, providing for a review of certain cases by the Supreme Court, is not identical with but more limited than section 709, Rev. Stat., which prescribes our jurisdiction over final judgments of State courts.

It is contended that the only question determined by the State court was the applicability of the equitable doctrine of subrogation, that no statute of Congress was suggested giving a right of subrogation in cases like this, and therefore that the decision of the State court rested upon a matter of general law. But the answer of the defendant, after stating the circumstances of the payment by the several carriers, alleged that it was "entitled to the first lien on said goods under the laws of the United States for the amount of said duties." Although no single statute was mentioned, it claimed a lien on the goods under and by virtue of the laws of the United States, and thus directly called for a determination of a Federal right. (*Crowell* v. *Randell*, 10 Pet. 368; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116–142; *Furman* v. *Nichol*, 8 Wall. 44, 56; *Dooley* v. *Smith*, 13 Wall. 604.) The question in fact presented and decided was not simply the scope and applicability of the doctrine of subrogation, but rather to what extent, considering the obligations cast by the revenue laws and the duties of common carriers as between themselves and the shipper, the carrier was protected by the laws of the United States in paying custom duties exacted under them. When we stop to consider the great volume of imports handled almost exclusively by common carriers, the owners or consignees being often in the interior of the country, this is obviously a question of supreme importance. And this question is solved not alone upon general principles of law, but involves an enquiry as to the effect of exactions made under authority of the statutes of the United States. We are, by section 709, Rev. Stat., given jurisdiction over the final judgments of State courts "where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute

of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed." The contention of the railroad company is that payment of duties exacted under the statutes of the United States does not operate simply to release the goods, but also gives in cases like the present, to the carrier, the right and privilege of maintaining possession until it is reimbursed these duties. Is the statute to be considered simply as a demand for money, or does it also carry a grant to one situated as this carrier, of a right and privilege of possession? This right and privilege was specially set up and claimed by the railroad company. Whether it existed was the substantial question presented and decided. And whether rightly or wrongly decided the presentation of the question, the claim of the right and privilege was, when denied by the State court, sufficient to give this court jurisdiction.

We pass, therefore, to consider the merits. Do the laws of the United States exacting the payment of duties at ports of entry justify the carrier in paying those duties, and give to it a lien therefor as against the owner? It must be remembered that the Government has not prescribed payment simply at the place of delivery, but has named the ports of entry at which, and at which only, payment can be made. Must the carrier insist that the owner shall be present at the place of entry to himself make payment, or, after notifying the owner, leave the goods in the hands of the Government officials to be held for the charges thereon, or, may the carrier pay the charges and maintain possession until reimbursed by the owner? It is unnecessary to consider what rights would exist if it were alleged that the goods imported were free from duty, or that there had been overcharges or wrongful conduct on the part of the Government officials. Here the regularity of the proceedings on the part of the Government officials and the correct amount of the duties collected are unquestioned.

We are of opinion that the custom laws of the United States are potent to fully protect the carrier in the payment of the legal duties charged upon goods in its possession. In order to fully understand the force and scope of any statute or body of statutes we must have regard to the conditions and circumstances for which the legislation was intended and under which it is to become operative. We are not narrowly to read the letter and ignore the state of affairs to which that legislation was intended and is applicable. As we have said, the great body of imports is subject to duties, and payment thereof is by statute specifically required to be made at certain places. These imports are brought in by carriers and distributed by them to the several places of destination.

It is unnecessary to cite authorities to the proposition that it is the common law duty of the carrier to receive, carry and deliver goods; that by virtue of this obligation it is entitled to retain possession until its charges

are paid. Nor is this lien confined to the charges for its own transportation. The law is thus stated in Overton on Liens, sec. 135, p. 166:

"The lien attaches not alone for the particular item of charge for carriage due upon the goods, but for such other legal charges as the carrier, in the course of his duty, may have been compelled to expend upon their care, custody and preservation. As when a railway, in the transportation of live stock, as cattle, horses and swine, has been at expense of labor and money in feeding and preserving them, such expense is a legitimate charge in addition to their transportation. For the carrier is under special obligation to guard and protect such property, hence the propriety of a lien for such extraordinary expense and care. If a carrier, in the ordinary course of the business, pay back charges upon goods due to another carrier in the course of transportation, as they come to him, he may recover for such back charges and freight so paid; and the owner may seek his remedy for any damages done them against the party in whose hands it was done, or under his original contract of shipment."

See also Hutchinson on Carriers, sec. 478*a;* Ray on Freight Carriers, sec. 102. In Schouler on Bailments, p. 544, it is said:

"A common carrier, then, may usually retain particular goods, by virtue of his lien right, until the freight and charges due thereon for his whole transportation are paid or tendered him, and he cannot be compelled to give them up sooner. This lien, moreover, extends to all the proper freight and storage charges upon the goods throughout the whole of a continuous transit over successive lines; since the last carrier or final warehouseman may advance what was lawfully due his predecessors, and hold the property as security for his reimbursement."

In making payment to a connecting carrier of its freight charges the carrier is not a mere volunteer, such as is referred to in *Ætna Life Insurance Company* v. *Middleport,* (124 U. S. 534.)

All this was matter of common knowledge, and upon this the legislation in respect to duties was enacted. Is it to be supposed that Congress intended that protection to the carrier should depend upon the perhaps varying opinions of the courts of the different States as to whether in making payment the carrier was a mere volunteer, or whether it can be subrogated to the rights and remedies of the nation? It must be remembered that the importation of goods is a subject of national and not of State regulation, that such power of regulation continues until the final delivery of the imported articles, so that over the entire transportation of these goods to St. Louis, the place of delivery, the power of Congress was supreme and exclusive. It must also be remembered that bonded goods are, by section 2993, Rev. Stat., deliverable only to carriers designated by the Secretary of the Treasury, who are made responsible to the United States, and are required to give bond to the United States in such form and amount and with such conditions and security as the Secretary of the Treasury shall require. Is it not reasonable to hold that Congress—having in mind the duty of carriers in reference to transportation and deliv-

ery, their customary lien for charges, and their right to retain possession during transit—in directing the custom house officers to take goods out of a carrier's possession, inspect and hold until the duties are paid, intended that upon payment the Government lien should pass to the carrier with a view of enabling it to discharge its duty of carriage and delivery to the consignee? It was not necessary to specifically state that the Government's lien was transferred, for when Congress provided by statute for interrupting the carrier's common law right of possession, it is implied that the action necessarily taken by the carrier to regain possession shall work no injury to the rights which flow from possession. Such, it seems to us, is the fair import of this legislation, enacted, as it was, in view of the well recognized rights and duties of carriers. The defendant should not, therefore, have been deprived of the possession of the goods without a repayment of the duties.

It is insisted, however, that the goods were shipped in bond to St. Louis, that the Canadian Pacific for its own convenience wrongfully changed their bonded destination to the port of St. Paul, and that during the examination and inspection at St. Paul some of the curios were broken, and some lost, whereas if they had been shipped in bond to St. Louis they might have been opened and examined in the presence of the plaintiff and injury and loss prevented. Conceding this, and that the Canadian Pacific by its wrongful act was liable for the injuries resulting to the plaintiff, the contract of shipment stipulated that each of the parties employed in the carriage should be liable only for loss or damage accruing upon its own road, and that such carriers should not be jointly liable, nor either for any loss or damage accruing upon the road of the other; so that whatever claim the plaintiff may have had for such injury and loss was only against the Canadian Pacific, and could not operate to prevent the defendant company from receiving that which by its payment it was entitled to.

The judgment of the St. Louis Court of Appeals is reversed and the case remanded to that court for further proceedings not inconsistent with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.